

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 384

GUARANTY TRUST COMPANY OF NEW YORK, AS
TRUSTEE UNDER ST. LOUIS SOUTHWESTERN
RAILWAY COMPANY FIRST TERMINAL AND
UNIFYING MORTGAGE, DATED JANUARY 1, 1912,
PETITIONER,

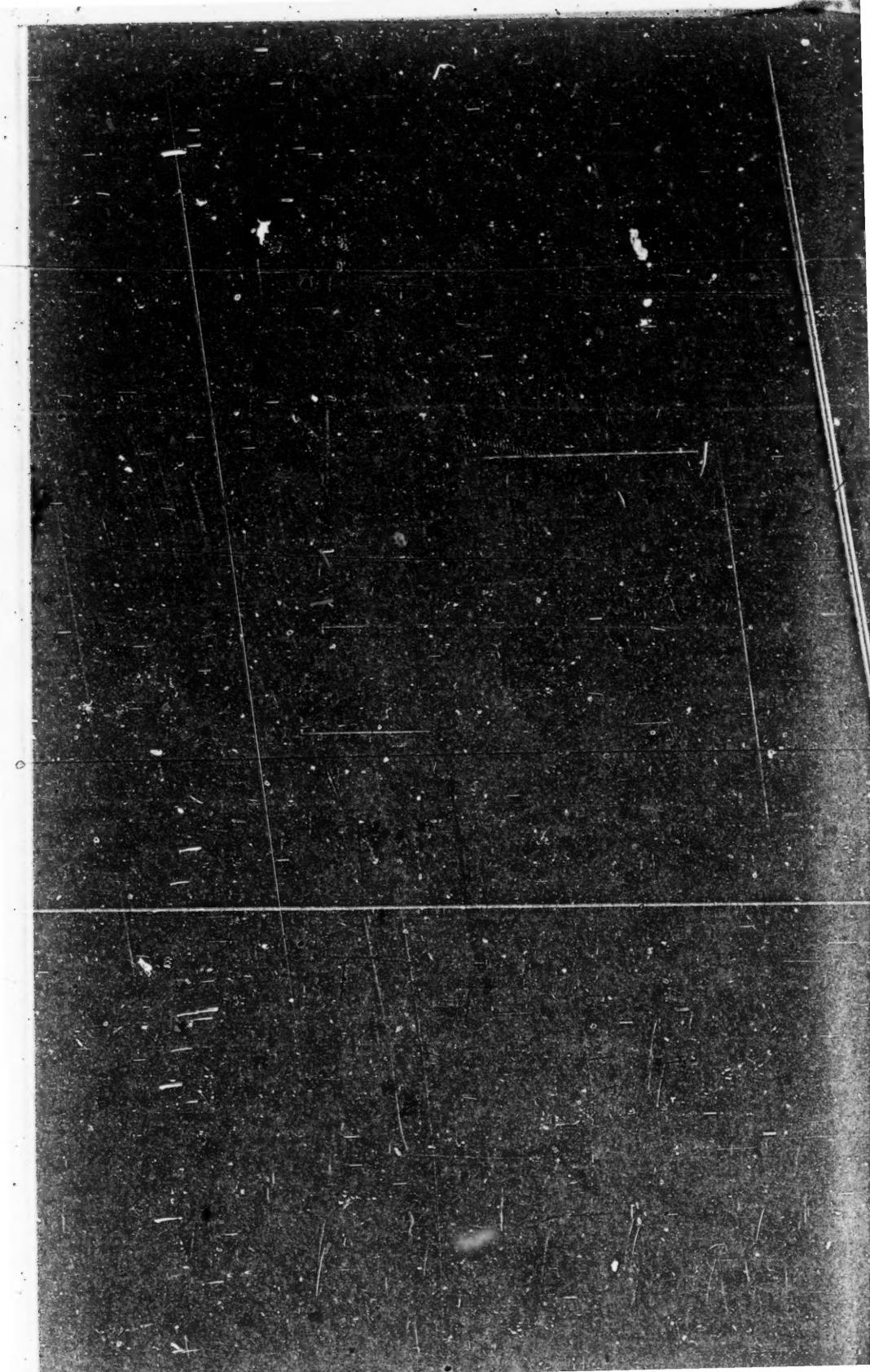
vs.

BERRYMAN HENWOOD, TRUSTEE OF ST. LOUIS
SOUTHWESTERN RAILWAY COMPANY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 27, 1938.

CERTIORARI GRANTED NOVEMBER 7, 1938.



United States Circuit Court of Appeals
EIGHTH CIRCUIT.

No. 11,172
IN BANKRUPTCY.

(APPEAL ALLOWED BY UNITED STATES CIRCUIT COURT
OF APPEALS)

GUARANTY TRUST COMPANY OF NEW YORK, AS
TRUSTEE UNDER ST. LOUIS SOUTHWESTERN
RAILWAY COMPANY FIRST TERMINAL AND
UNIFYING MORTGAGE DATED JANUARY 1,
1912, APPELLANT,

vs.
BERRYMAN HENWOOD, TRUSTEE OF ST. LOUIS
SOUTHWESTERN RAILWAY COMPANY, DEBT-
OR, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, AND SOUTHERN PACIFIC COM-
PANY, APPELLEES.

No. 11,182
IN BANKRUPTCY.

(APPEAL ALLOWED BY UNITED STATES DISTRICT COURT)

GUARANTY TRUST COMPANY OF NEW YORK, AS
TRUSTEE UNDER ST. LOUIS SOUTHWESTERN
RAILWAY COMPANY FIRST TERMINAL AND
UNIFYING MORTGAGE DATED JANUARY 1,
1912, APPELLANT,

vs.
BERRYMAN HENWOOD, TRUSTEE OF ST. LOUIS
SOUTHWESTERN RAILWAY COMPANY, DEBT-
OR, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, AND SOUTHERN PACIFIC COM-
PANY, APPELLEES.

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FOR THE EASTERN DISTRICT OF MISSOURI.

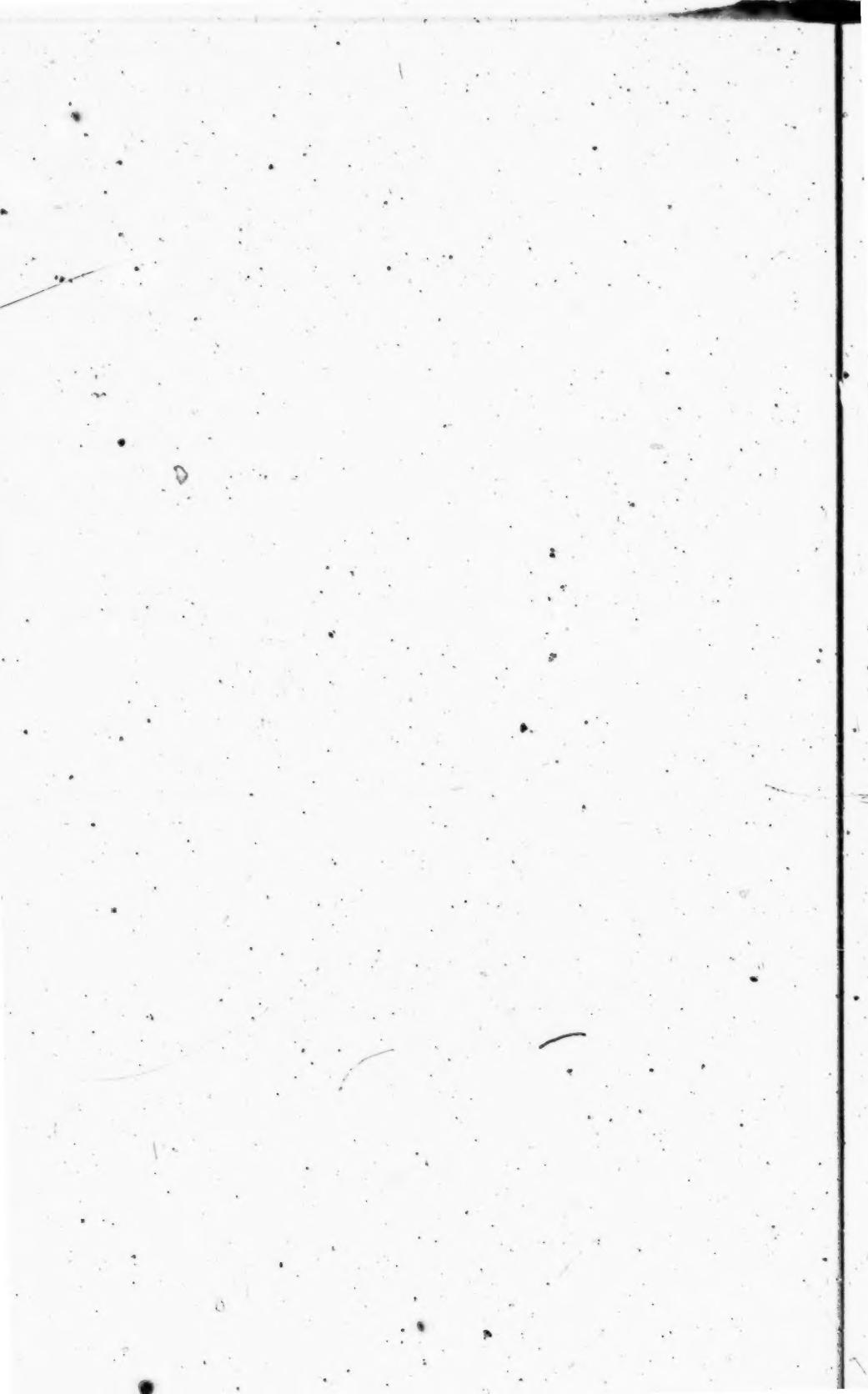
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Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the May Term, 1938, of said Court, before the Honorable Kimbrough Stone, the Honorable John B. Sanborn and the Honorable Arba S. Van Valkenburgh, Circuit Judges.

Attest:

E. E. KOCH,

(Seal).

Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be It Remembered that heretofore, to-wit: on the fifteenth day of April, A. D. 1938, a transcript of record pursuant to an appeal from the District Court of the United States for the Eastern District of Missouri allowed by the United States Circuit Court of Appeals for the Eighth Circuit in a certain cause wherein the Guaranty Trust Company of New York, as Trustee, etc., was Appellant and Berryman Henwood, Trustee, etc., et al., were Appellees; and pursuant to an appeal allowed by the District Court of the United States for the Eastern District of Missouri in a certain cause wherein the Guaranty Trust Company of New York, as Trustee, etc., was Appellant and Berryman Henwood, Trustee, etc., et al., were Appellees, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, which said transcript as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, is in the words and figures following, to-wit:

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itation on Appeal Allowed by U. S. District Court and
Service.)

(Filed April 5th, 1938.)

United States of America:

Berryman Henwood, Trustee of St. Louis Southwestern
Railway Company, debtor, St. Louis Southwestern
Railway Company and Southern Pacific Company.—
Greeting:

You are hereby cited and admonished to be and appear in
United States Circuit Court of Appeals, Eighth Circuit,
St. Louis, Missouri, forty days from and after the day this
citation bears date, pursuant to an appeal filed in the Clerk's
Office of the District Court of the United States for the East-
ern Division of the Eastern Judicial District of Missouri,
therein Guaranty Trust Company of New York as Trustee
under St. Louis Southwestern Railway Company First Ter-
minal and Unifying Mortgage dated January 1, 1912 ap-
peant in error, and you are appellee to show cause, if any
there be, why the judgment rendered against the said ap-
peant, as in said appeal mentioned, should not be corrected,
and why speedy justice should not be done the parties in that
cause.

In witness, the Honorable Charles B. Davis, Judge of the Dis-
trict Courts of the United States for the Eastern Dis-
trict of Missouri, this 2nd day of April in the year
of our Lord one thousand nine hundred and thirty-
eight.

CHARLES B. DAVIS,
United States District Judge, for
the Eastern District of Missouri.

Copy of above received this 2nd day of April, 1938.

A. H. KISKADDON,
CARLETON S. HADLEY,
Counsel for Berryman Henwood,
Trustee, St. L. S. W. Ry. Co.,
Debtor.

A. H. KISKADDON,
CARLETON S. HADLEY,
Attorneys for St. Louis South-
western Ry. Co.

Copy of above received this 4th day of April, 1938.

BEN C. DEY,
GEORGE L. BULAND,
Counsel for Southern Pacific Co.

Endorsed: Filed in U. S. District Court on April 5, 1938.

Proof of Claim of Guaranty Trust Company of New York as
Trustee Under Mortgage Dated January 1, 1912, of
St. Louis Southwestern Railway Company Securing
First Terminal and Unifying Mortgage Bonds.

(Filed Sept. 30, 1936.)

In the District Court of the United States, Eastern Division,
Eastern Judicial District of Missouri.

In the Matter of:

St. Louis Southwestern Railway Company, Debtor.

In Proceedings for Reorganization of a Railroad,
No. 8497.

United States of America,
Southern District of New York,
City, County and State of New York—ss.

At the City of New York, in the Southern District of New York, on the 24th day of September, 1936, came Henry A. Theis of Haworth, New Jersey, and made oath and says as follows:

1. Guaranty Trust Company of New York is a corporation incorporated under the laws of the State of New York and carrying on business at No. 140 Broadway, (1148) in the Borough of Manhattan, City, County and State of New York.

Deponent, Henry A. Theis, is a Vice President of said Guaranty Trust Company of New York and is one of the of-

ficers having supervision of the matters hereinafter set forth, and of the duties of said Guaranty Trust Company of New York under the Mortgage hereinafter mentioned, and the above address is hereby designated as the address to which all notices to Guaranty Trust Company of New York as a creditor shall be mailed.

2. The above named Debtor, St. Louis Southwestern Railway Company, a Missouri corporation, the corporation by which a petition for reorganization under Section 77 of the Bankruptcy Act has been filed herein, was at and before the date of the filing of said petition and of the date of the order of this court approving such petition as properly filed under said Section 77, viz. on December 12, 1935, and still is justly and duly indebted to Guaranty Trust Company of New York as Trustee (hereinafter sometimes referred to as the Claimant) as hereinafter stated.

3. The consideration for said indebtedness and the nature and amount thereof are:

Upon information and belief, the Debtor, shortly prior to April 24, 1912, pursuant to due corporate action; duly authorized the creation of an issue of bonds to be known as its First Terminal and Unifying Mortgage Bonds (hereinafter sometimes called the "bonds"), to be limited in aggregate principal amount as specified in, to be issued in manner and form as provided by, and to be secured by, an (1149) Indenture of Mortgage on the property of the Debtor therein described or referred to.

In order to secure the payment of the principal and interest of all the First Terminal and Unifying Mortgage Bonds issued and to be issued under said Indenture of Mortgage according to their tenor and effect, and to secure the performance of all the covenants and conditions in said Indenture of Mortgage contained, the Debtor, on or about April 24, 1912, pursuant to due corporate action, duly made and executed under its corporate seal and delivered to Guaranty Trust Company of New York and Walker Hill, an individual citizen of the State of Missouri, as Trustees an Indenture of Mortgage (herein sometimes called the Mortgage) dated January 1, 1912, a copy of which is hereto annexed, marked Schedule A and made a part hereof. Guaranty Trust Company of New York and Walker Hill duly accepted the trusts created by the Mortgage and united in the execution thereof to evidence such acceptance. Walker Hill having died, Frank C.

Walker Hill on or about September 25, 1925, and still continues as such.

Upon information and belief, there were duly issued for a valuable consideration and are now outstanding under the Mortgage the following bonds of the Debtor in manner and form as provided by and as specified in the Mortgage, which now are the lawfully created, valid and existing obligations of the Debtor and entitled to the lien and security of the Mortgage and are in the hands of numerous bona fide holders for value:

1. 8,082 bonds (pieces) in the form of coupon bonds in the form set (1150) out beginning on page 3 of the Mortgage.
2. Temporary bonds of various denominations in the aggregate principal amount of \$3,425,000 payable to bearer issued pursuant to Section 5 of Article First of the Mortgage in the form attached hereto as Schedule B and made a part hereof.
3. Registered bonds of various denominations in the aggregate principal amount of \$10,431,000 in the form beginning on page 7 of the Mortgage.

Upon information and belief, the holders and owners of all temporary bonds outstanding under the Mortgage and the holders and owners of all or substantially all the registered bonds outstanding under the Mortgage have tendered to the Debtor all such bonds for cancellation in exchange for coupon bonds in the form specified in the Mortgage and have demanded such coupon bonds in exchange therefor in accordance with the provisions of the Mortgage, to which specific reference is hereby made.

Default has occurred under the provisions of the bonds and of the Mortgage in that, inter alia, default was made in the payment of the instalment of interest payable on said bonds on January 1, 1936, which default has continued for the space of three months and upwards and still continues; and in that default was made in the payment of the instalment of interest which matured on January 1, 1936, under the terms of the Second Mortgage of the Debtor dated February 12, 1891, which default still continues.

The Claimant has elected to receive, and has demanded in Amsterdam, Holland (as evidence whereof there is being transmitted to the Debtor the duly authenticated (1151) certificate of the Bailiff at Amsterdam, Holland, which is here-

by made a part hereof), payment in guilders of the full amount due for principal and interest on all bonds and coupons outstanding under the Mortgage except on those bonds or coupons the holders of which have made their own elections as to the money of payment, and the Claimant hereby confirms such election to receive such payment in guilders or the equivalent of said guilders in dollars at the rate of exchange existing on the date which, according to law, is the appropriate date for converting said guilders into dollars.

At and before December 12, 1935, the date on which the Debtor filed its original petition in these proceedings and on which said petition was approved by order of the court herein, by reason of the matters and things hereinbefore set forth the Debtor was and still is justly and truly indebted to the Claimant in the sum of 53,878,620 guilders in respect of principal of such bonds, together with unpaid interest thereon.

This proof of claim is made for all bonds issued and outstanding under said Mortgage, but the amount of this proof of claim shall be reduced to the extent that valid individual proofs of claim are filed on behalf of said bonds or coupons by the holders thereof, personally or by proxy and by the amount by which the value of guilders exceeds the value of any money other than guilders which any holder or holders of said bonds or coupons validly elect to receive in respect thereof.

4. Subsequent to December 12, 1935 there has become due, and in the future there will also become due from the Debtor to the Claimant as Trustee (1152) additional interest on the bonds and additional amounts for compensation to the Claimant as Trustee and expenses and liabilities of the Trustee, all of which Debtor is obligated to pay and payment of all of which is or will be secured by the Mortgage, and the compensation, expenses and liabilities of the Claimant as Trustee are or will be so secured prior to the lien of the bonds on the trust estate.

5. For a description of or reference to the security for the above indebtedness, reference is hereby made to said Mortgage, Schedule A hereto, subject to any releases of property and additions or substitutions of property thereunder as have been made from time to time as in said Mortgage provided. Subsequent to the execution and delivery of the Mortgage and in accordance with the provisions thereof, the Debtor duly pledged and delivered to the Claimant as Trus-

tee other securities not specifically described in the Mortgage, the description of which Claimant will produce as and when this Court may direct.

6. To the knowledge or belief of deponent: there exists no set-off or counterclaim to said debt; no note or other evidence of said debt has been received except as aforesaid; no part of said debt has been paid, and no judgment has been recovered therefor or for any part thereof, except on interest coupons maturing January 1 and July 1, 1934, and January 1, 1935, appertaining to certain of the bonds, on which an action entitled Anglo-Continentale Treuhand, A. G. vs. St. Louis Southwestern Railway Company was instituted in the United States District Court for the *Southern District of New York. Claimant has not, nor has any other person, to the knowledge or belief of deponent, for the use of the Claimant or holders (1153) of any of said bonds or coupons, had or received any manner of security for said debt whatever, other than the security of the Mortgage.

7. This proof of claim is filed herein pursuant to the aforesaid Mortgage and also pursuant to Order No. 81 of this Honorable Court in these reorganization proceedings filed May 22, 1936, as extended. All rights of the Claimant and holders of the bonds in respect of this claim are hereby expressly reserved, including the right to amend and to make more definite any part thereof.

HENRY A. THEIS,
Vice President of Claimant Guaranty
Trust Company of New York as Trust-
ee as aforesaid.

Subscribed and sworn to before me this 24th day of September, 1936.

LAURENCE E. DARREN, JR.,
Notary Public.

New York Co. Clk. No. 23.
New York Co. Reg. No. 7-D-77.

My Commission expires March 30, 1937.

(Exhibits filed but not printed.)

Filed Sept. 30, 1936. Jas. J. O'Connor, Clerk.

St. Louis Southwestern Railway Company.
to.

Guaranty Trust Company of New York and
Walker Hill,
Trustees.

First Terminal and Unifying Mortgage.
Dated January 1, 1912,
Securing

First Terminal and Unifying Mortgage Bonds.
Interest payable January 1 and July 1.
Principal due January 1, 1952.

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INDENTURE, dated the first day of January, in the year one thousand nine hundred and twelve, by and between St. Louis Southwestern Railway Company, a corporation organized and existing under the laws of the State of Missouri (hereinafter called the "Railway Company"), party of the first part, and Guaranty Trust Company of New York, a corporation organized and existing under the laws of the State of New York (hereinafter called the "Trust Company"), and Walker Hill, a citizen and resident of the State of Missouri, as Trustees (hereinafter called the "Trustees"), parties of the second part.

Whereas, the Railway Company is a corporation duly organized under the laws of the State of Missouri and owns and operates a main line of railway extending from Bird's Point on the Mississippi River, in Mississippi County, Missouri, opposite, or nearly opposite, Cairo, Illinois, and thence extending southwardly to Texarkana, on the state line between the States of Arkansas and Texas, together with certain branches in the States of Missouri, Arkansas and Louisiana, the aggregate length of such main line and branches being about 622 miles; and

Whereas, the Railway Company desires to provide for the funding of certain of its indebtedness secured by mortgage or lien, and for making additions to and extensions of its lines of railroad, and for the acquisition of additional terminals and terminal facilities, and also to provide reimbursement for the expenditures made by it in the construction or acquisition of branches and extensions and in the permanent betterment, improvement and equipment of its railroads and property, and for the purchase or acquisition of additional equipment and property, and for such and other corporate purposes desires to borrow money and mortgage its corporate property and franchises; and

Whereas, the Railway Company, in pursuance of resolutions of its Board of Directors and of its stockholders, at meetings of said Board and of said stockholders duly convened and held in accordance with law and the by-laws of the Railway Company, has

Lines of
railway owned
and operated
by Railway
Company.

Purposes of
bond issue and
this mortgage.

Corporate
action
authorizing
bonds.

*There are no marginal notes in the original mortgage.

Principal sum
of \$100,000,000.

determined, for the purposes of this indenture set forth, to create its forty-year mortgage bonds, to be designated "First Terminal and Unifying Mortgage Bonds," limited to an aggregate principal amount of One Hundred Million Dollars (\$100,000,000), at any one time outstanding, to be coupon bonds with provision for registration as to principal, and registered bonds without coupons, to be payable on the first day of January, 1952, with interest at the rate of five per cent. per annum, payable semi-annually on the first days of January and July in each year; said bonds, both as to principal and interest, to be payable at the office or agency of the Railway Company in the Borough of Manhattan, in the City and State of New York, in gold coin of the United States of America or equal to the standard of weight and fineness as it existed January 1, 1912 (the coupon bonds also to be payable, both as to principal and interest, at such places in the following cities in foreign countries as the Board of Directors may from time to time designate, viz.: London, England, or Amsterdam, Holland, or Berlin, Germany, or Paris, France), and both as to principal and interest without deduction for any tax or governmental charge which the Railway Company or the Trustees may be required or permitted to pay or to retain therefrom under any present or future law of the United States of America or of any state, territory, county, municipality or other taxing authority therein; and

Payment of
bonds in
foreign
currencies.

Corporate
action
authorizing
mortgage.

Whereas, for the purpose of securing the payment of said bonds and the interest thereon, the Railway Company, by resolution of its Board of Directors at said meeting of said Board duly called and held, and by the affirmative vote of the persons holding the larger amount in value of the stock of the Railway Company at said meeting of said stockholders duly convened and held in accordance with law and with the by-laws of the Railway Company, has determined to execute and deliver to the parties hereto of the second part, as Trustees, a mortgage and deed of trust, in the terms of this indenture, of the lines of railroad, property (both real and personal) and franchises hereinafter described; and

Whereas, the First Terminal and Unifying Mortgage Coupon Bonds may be payable, at the option of the holder, both as to principal and interest, at some

one or more of the following places in addition to the City of New York, and in the moneys current at such respective places of payment, at the following rates of exchange or equivalents of \$1,000, viz.: In London, England, £205.15.2 Sterling, or in Amsterdam, Holland, 2490 guilders, or in Berlin, Germany, 4200 marks, D. R. W., or in Paris, France, 5180 francs; and

Rates of exchange.

Whereas, the text of the First Terminal and Unifying Mortgage Bonds is to be in substantially the following form (the blanks in the form of registered bond without coupons to be properly filled as such bonds are issued):

[Form of Coupon Bond.]

No.

| | | |
|----------------------|---------------|-------------------------|
| \$1,000. | \$1,000. | Form of coupon bond. |
| U. S. Gold | U. S. Gold | |
| 205 15s. 2d. Stg. | 2490 Guilders | |
| Marks 4200, D. R. W. | 5180 Francs | |

United States of America.

St. Louis Southwestern Railway Company.

First Terminal and Unifying Mortgage Bond.

St. Louis Southwestern Railway Company, a corporation of the State of Missouri (hereinafter called the Railway Company), for value received, hereby promises to pay to the bearer, or, if registered, to the registered holder, of this bond, on the first day of January, 1952, at its office or agency in the Borough of Manhattan, City and State of New York, One Thousand Dollars in gold coin of the United States of America, of or equal to the standard of weight and fineness as it existed January 1, 1912, or in London, England, £205 15s 2d, or in Amsterdam, Holland, 2490 guilders, or in Berlin, Germany, marks 4200, D. R. W., in Paris, France, 5180 francs, and to pay interest thereon, at the rate of five per cent. per annum, from the first day of January, 1912, in said respective currencies, semi-annually on the first day of January and the first day of July in each year, until payment of said principal sum, but only upon presentation and render, as they severally mature, of the coupons annexed hereto. Payment of the principal and interest of this bond will be made, at the holder's option, at the office or agency of the Railway Company

0

GUARANTY TRUST CO. OF NEW YORK, ETC. VS.

in the Borough of Manhattan, in the City and State of New York, or at designated offices in the foreign cities and countries above mentioned. Both the principal and interest of this bond shall be paid without deduction for any tax or governmental charge which the Railway Company or the Trustees under the mortgage and deed of trust, hereinafter mentioned, may be required or permitted to pay or to retain therefrom under any present or future law of the United States of America or of any state, territory, county, municipality or other taxing authority therein.

This bond is one of a duly authorized issue of First Terminal and Unifying Mortgage Bonds of the Railway Company, limited to the aggregate principal amount of \$100,000,000 at any one time outstanding, issued and to be issued under and equally secured by a mortgage and deed of trust, dated January 1, 1912, duly executed by the Railway Company, to Guaranty Trust Company of New York and Walker Hill, as Trustees, hereinafter termed the First Terminal and Unifying Mortgage. For a description of the properties and franchises mortgaged, the nature and extent of the security, the rights of the holders of said bonds under the same and the terms and conditions upon which said bonds are issued and secured, reference is made to the said First Terminal and Unifying Mortgage. In case an event of default, as defined in the First Terminal and Unifying Mortgage, shall occur, the principal of the First Terminal and Unifying Mortgage Bonds may become or be declared due and payable, in the manner and with the effect provided in the said First Terminal and Unifying Mortgage.

This bond shall pass by delivery unless it is registered in the owner's name at the office or agency of the Railway Company in the Borough of Manhattan, in the City of New York, and such registration is also noted on the bond. After such registration no transfer shall be valid unless made by the registered holder in person or by attorney duly authorized, and similarly noted on the bond by the registrar; but this bond may be discharged from registration and its transferability by delivery be restored by a like transfer to bearer noted hereon, after which it may again, from time to time, be registered or made transferable to bearer as before. Any registration, however, shall not affect the negotiability of the coupons.

always be transferable by delivery. The holder may also, at his option, surrender, for cancellation, this bond with the coupons for future interest thereon, in exchange for a registered bond without coupons, as provided in said mortgage and deed of trust, and on payment of the transfer charges and the expenses incident to such exchange, which said registered bond without coupons may in turn be exchanged for a coupon bond or coupon bonds. No recourse shall be had for the payment of the principal or interest of this bond or any part thereof, nor for any claim based thereon, nor otherwise in respect thereof or of the First Terminal and Unifying Mortgage, against any officer, director or stockholder, past, present or future, of the Railway Company, as such, whether by virtue of any statute or by the enforcement of any assessment or penalty, or otherwise, all such liability being, by the acceptance hereof and as part of the consideration of the issue hereof, expressly released.

This bond shall not be valid or become obligatory for any purpose until it shall have been authenticated by the certificate endorsed hereon executed by Guaranty Trust Company of New York, or by its corporate successor, as Trustee of said First Terminal and Unifying Mortgage.

In witness whereof, St. Louis Southwestern Railway Company has caused this bond to be signed by its President or a Vice-President, and its corporate seal to be hereunto affixed, duly attested by its Secretary or an Assistant Secretary, and coupons for said interest, with the engraved fac-simile signature of its Treasurer, to be attached hereto, as of the first day of January, 1912.

St. Louis Southwestern Railway Company.

By

President.

Attest

Secretary.

And whereas, there are to be attached to said coupon bonds, at the time of the issue thereof, coupons representing the semi-annual instalments of inter-

coupons is to be of substantially the following form (the blanks therein being properly filled), to wit:

[Form of Interest Coupon.]

| No. | \$25. | \$25. |
|----------------|-------|-----------------|
| 105.05 Marks. | | £5 2s 10½d. |
| 129.50 Francs. | | 62.25 Guilders. |

On the first day of 19 , St. Louis Southwestern Railway Company will pay to the bearer, upon presentation and surrender of this coupon for cancellation, at its office or agency in the Borough of Manhattan, in the City of New York, Twenty-five Dollars (\$25) in United States gold coin, or in London, England, £5 2s. 10½d. Sterling, or in Amsterdam, Holland, 62.25 guilders, or in Berlin, Germany, 105.05 marks, or in Paris, France, 129.50 francs, being six months' interest then due upon its First Terminal and Unifying Mortgage Bond, No.

Treasurer.

[Form of Registered Bond.]

| No. | \$ |
|---|----|
| United States of America. | |
| St. Louis Southwestern Railway Company. | |
| First Terminal and Unifying Registered Mortgage Bond. | |

St. Louis Southwestern Railway Company, a corporation of the State of Missouri (hereinafter called the Railway Company), for value received, hereby promises to pay to

or registered assigns on the first day of January, 1952, at its office or agency in the Borough of Manhattan, City and State of New York,

Dollars in gold coin of the United States of America, of or equal to the standard of weight and fineness as it existed January 1, 1912, and to pay interest thereon, at the rate of five per cent. per annum, from the first day of January or July, as the case may be, next preceding the date of this bond (unless this bond be dated January 1 or July 1, and in that event from its date), in like gold coin, semi-annually on the first day of January and the first day of July in each

year, until payment of said principal sum. Payment of the principal and interest of this bond will be made at the office or agency of the Railway Company in the Borough of Manhattan in the City and State of New York. Both the principal and interest of this bond shall be paid without deduction for any tax or governmental charge which the Railway Company or the Trustees under the mortgage and deed of trust, hereinafter mentioned, may be required or permitted to pay or to retain therefrom under any present or future law of the United States of America or of any state, territory, county, municipality or other taxing authority therein.

This bond is one of a duly authorized issue of First Terminal and Unifying Mortgage Bonds of the Railway Company, limited to the aggregate principal amount of \$100,000,000 at any one time outstanding, issued and to be issued under and equally secured by a mortgage and deed of trust, dated January 1, 1912, duly executed by the Railway Company to Guaranty Trust Company of New York and Walker Hill as Trustees, hereinafter termed the First Terminal and Unifying Mortgage. For a description of the properties and franchises mortgaged, the nature and extent of the security, the rights of the holders of said bonds under the same and the terms and conditions upon which said bonds are issued and secured reference is made to the said First Terminal and Unifying Mortgage. In case an event of default, as defined in the First Terminal and Unifying Mortgage, shall occur, the principal of the First Terminal and Unifying Mortgage Bonds may become or be declared due and payable, in the manner and with the effect provided in the said First Terminal and Unifying Mortgage.

This bond is transferable by the registered holder in person or by attorney duly authorized at the office or agency of the Railway Company in the Borough of Manhattan, in the City of New York, upon surrender and cancellation of this bond, and thereupon a new registered bond will be issued to the transferee in exchange therefor, as provided in said First Terminal and Unifying Mortgage; or the registered owner hereof, at his option, may surrender the same for cancellation and in exchange for a like amount of the principal thereof in coupon bonds, having coupons at-

tached maturing on and after the next ensuing interest due date, which said coupon bonds may in turn be exchanged for a registered bond or registered bonds without coupons. No recourse shall be had for the payment of the principal or interest of this bond or any part thereof, nor for any claim based thereon, nor otherwise in respect thereof or of the First Terminal and Unifying Mortgage, against any officer, director or stockholder, past, present or future, of the Railway Company, as such, whether by virtue of any statute or by the enforcement of any assessment or penalty, or otherwise, all such liability being, by the acceptance hereof and as part of the consideration of the issue hereof, expressly released.

This Bond shall not be valid or become obligatory for any purpose until it shall have been authenticated by the certificate endorsed hereon executed by Guaranty Trust Company of New York, or by its corporate successor, as Trustee of said First Terminal and Unifying Mortgage.

In witness whereof, St. Louis Southwestern Railway Company has caused this bond to be signed by its President or a Vice-President, and its corporate seal to be hereunto affixed duly attested by its Secretary or an Assistant Secretary, the _____ day of

, 19 .

St. Louis Southwestern Railway Company,

By

President.

Attest:

Secretary.

And whereas, on each of the bonds issued under and secured by this indenture there is to be endorsed a certificate of Guaranty Trust Company of New York, as Trustee under said indenture, or by its corporate successor, that it is one of the bonds described in this indenture; and no bond shall be secured by this indenture or shall be obligatory for any purpose unless such certificate shall have been executed by said Trustee or by its corporate successor, said certificate to be of substantially the following tenor, to wit:

[Form of Trustee's Certificate.]

Form of
Trustee's
certificate.

This bond is one of the bonds described in the within mentioned mortgage and deed of trust.

Guaranty Trust Company of New York,

Trustee.

By

And whereas, all things necessary to make such bonds, when executed by the Railway Company and authenticated by Guaranty Trust Company of New York, or by its corporate successor, as Trustee under said mortgage and deed of trust, the valid, binding and legal obligations of the Railway Company, and to constitute these presents a valid, binding and legal mortgage and deed of trust for the security thereof, have been done and performed, and the execution of said bonds and of this indenture has in all respects been duly authorized, and the Railway Company proposes to issue the bonds hereby secured in the exercise of each and every legal right and power in it vested:

Now, therefore, this indenture witnesseth:

That in order to secure the payment of the principal and interest of all of said bonds at any time issued and outstanding under this indenture, according to their tenor, purport and effect, as well the interest thereon as the principal thereof, and to secure the performance and observance of all the covenants and conditions therein or herein contained, and to declare the terms and conditions upon which such bonds are and are to be authenticated and delivered and received, the Railway Company, party of the first part, in consideration of the premises and of the acceptance or purchase of said bonds by the holders thereof, and of the sum of \$100, lawful money of the United States of America, to it duly paid by the Trustees at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has executed and delivered these presents, and has granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred, pledged and set over, and by these presents does grant, bargain, sell, alien, remise, release, convey, confirm, assign, transfer, pledge and set over, unto the Trustees, parties hereto of the second part, their successors and assigns for

Granting
clauses.

ever, all and singular the railroads, properties, franchises, rights, powers and privileges of the Railway Company which are more particularly described as follows:

All and singular the line of railway of the Railway Company, party hereto of the first part, in the States of Missouri, Arkansas and Louisiana, extending from Bird's Point on the Mississippi River in Mississippi County, State of Missouri, opposite or nearly opposite Cairo, Illinois, and extending westwardly through the Counties of Mississippi, New Madrid and Dunklin, in the State of Missouri, to the line between the States of Missouri and Arkansas; thence through the Counties of Clay, Greene, Craighead, Poinsett, Cross, St. Francis, Woodruff, Monroe, Prairie, Arkansas, Jefferson, Cleveland, Dallas, Calhoun, Ouachita, Columbia, Lafayette and Miller, in the State of Arkansas, to the state line between the States of Arkansas and Texas at Texarkana, a distance of about 418.9 miles; also a branch or extension from Lilbourn, in the County of New Madrid, to and into the town of New Madrid, in the State of Missouri, a distance of about 6.1 miles; also a branch or extension from the town of Malden, Dunklin County, Missouri, northwestwardly through the Counties of Dunklin, Stoddard and Cape Girardeau, to a junction with the St. Louis, Iron Mountain and Southern Railway at Delta in said last-named county, a distance of about 51.4 miles; also a branch or extension from the town of Altheimer, in the County of Jefferson, State of Arkansas, northwestwardly through the Counties of Jefferson, Lonoke and Pulaski, to the City of Argenta, Arkansas, a distance of about 42.9 miles; also a branch or extension from the town of McNeil, Columbia County, Arkansas, to Magnolia, Arkansas, a distance of about 6.4 miles; also a branch or extension from the town of Lewisville, in the County of Lafayette, in the State of Arkansas, southwardly through said County of Lafayette, Arkansas, and Bossier and Caddo Parishes, Louisiana, to Shreveport, Louisiana, a distance of about 61.2 miles; being a total distance of main line and branches or extensions of about 586.9 miles.

Subject, however, as to the lines of railroad and appurtenant property above described, to the following mortgages or deeds of trust, namely:

Properties
mortgaged
Line of rail-
way.

—subject to
certain
mortgages

1. A mortgage or deed of trust, dated February 12, 1891, made by St. Louis Southwestern Railway Company to Central Trust Company of New York, as trustee, known as the First Mortgage of the Railway Company, under which bond certificates are outstanding in the principal amount of \$20,000,000, maturing November 1, 1989.

2. A certain mortgage or deed of trust, dated February 12, 1891, made by St. Louis Southwestern Railway Company to The Mercantile Trust Company (now Bankers Trust Company), as trustee, known as the Second Mortgage of the Railway Company, under which bond certificates are outstanding in the principal amount of \$10,000,000, maturing November 1, 1989.

3. A certain mortgage or deed of trust, dated June 1, 1902, made by St. Louis Southwestern Railway Company to Bowling Green Trust Company (now The Equitable Trust Company of New York) and David R. Francis, as trustees, known as the First Consolidated Mortgage of the Railway Company, under which bonds are authorized in the principal amount of \$25,000,000 and are outstanding in the principal amount of \$22,261,750, maturing June 1, 1932.

Also the line of railroad owned by the Railway Company and formerly owned by the Stuttgart and Arkansas River Railroad Company, extending from Stuttgart, in Arkansas County, to its terminus at Gillett, in said county, a distance of about 35.1 miles.

Also line of railroad formerly owned by Stuttgart and Arkansas River Railroad Company

Subject, however, as to said line of railroad last above mentioned, to the lien of the aforesaid First Consolidated Mortgage of the Railway Company and to all of the conditions and provisions of said mortgage.

—subject to
lien of First
Consolidated
Mortgage

Also any and all roadbeds, superstructures, rights-of-way, rails, tracks, side-tracks, bridges, viaducts, buildings, depots, stations, warehouses, car-houses, engine-houses, freight-shops, coal-houses, wood-houses, machine-shops and other shops, turntables, water-stations, fences, docks, structures, erections, fixtures and all other things of whatever kind now owned or

Other prop-
erty; including
—Appurte-
nances and
equipment

successors and appertaining to any of the lines of railway, branches or extensions above described, or appertaining to any line of railway, branch or extension, or other property, now or hereafter owned by the Railway Company and subject to the lien of this indenture.

Tolls, revenues, earnings, etc.

Also all tolls, revenues, earnings, income, rents, issues and profits of said lines of railway, extensions and branches, or of any part thereof, now or hereafter subject to the lien of this indenture, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the Railway Company, of, in and to the said lines of railway, extensions and branches, and every part and parcel thereof, with the appurtenances and franchises heretofore or hereafter appertaining thereto.

Property procured through the use of bonds secured hereby.

Also any and all lines of railway, extensions and branches, telegraph and telephone lines, including the franchises appertaining thereto, and any and all terminal properties, depots, shops, machinery, tools, docks, wharves, ferries, landings, boats, rolling stock and other equipment, and any and all bonds, stocks and other property of every kind and description (notwithstanding that the same are not now particularly set forth in this indenture) which from time to time, in the manner hereinafter provided, shall be purchased, acquired or constructed by the use of any bonds secured by this indenture; together with all and singular the franchises, rights and privileges appertaining to or used in connection with such lines of railway, extensions, branches, telegraph and telephone lines, and any and all the rents, issues, profits, tolls and other incomes therefrom.

Additions, improvements and betterments.

Also any and all additions, improvements and betterments, now or hereafter acquired or constructed, to or upon or in connection with any and all lines of railway, extensions and branches now or at any time hereafter subject to this indenture; any and all property (real or personal) of every kind and description, acquired for use upon or in connection with or for the purpose of such lines of railway, extensions or branches, and any and all corporate rights, privileges and franchises which the Railway Company now has or hereafter may or shall acquire, possess or exercise or be entitled to exercise, in, to, upon or in respect of such lines of railway, extensions or branches or

Corporate rights, privileges and franchises.

any part thereof, necessary for or appertaining to the construction, maintenance or operation of said lines of railway, extensions or branches, and any and all the rents, issues, profits, tolls and other income of said lines of the Railway Company and of any and all such extensions and branches, and also any and all of the rights, privileges, franchises, properties (real or personal) and things which the Railway Company may or shall hereafter possess or become entitled to possess for the purposes of or in connection with such lines of railway or any such extensions or branches.

Subject, however, as to any premises, railways and properties now owned or which may be hereafter acquired by the Railway Company, to the mortgages and liens hereinbefore mentioned, in so far, but only in so far, as the same may be their terms respectively attach to said premises, railways and properties, and to any liens thereon existing at the time of such acquisition by the Railway Company.

Also all the right, title and interest of the Railway Company in and under all leases, traffic agreements and trackage rights or contracts.

Also the following shares of stock, which are hereby pledged with the Trustees hereunder, viz.:

24,955 shares, of the par value of \$100 each, of the Capital Stock of St. Louis Southwestern Railway Company of Texas.

Subject, however, as to said shares of stock, to the liens of the above-mentioned First Mortgage, Second Mortgage and First Consolidated Mortgage of St. Louis Southwestern Railway Company, and to the pledge and deposit of said stock under said First Mortgage.

Also the following described bonds, which are hereby pledged with the Trustees hereunder, viz.:

Four Per Cent. First Mortgage Gold Bond of St. Louis Southwestern Railway Company of Texas, in the principal amount of \$9,445,000, dated January 13, 1891, and maturing November 1, 1989, and secured by a mortgage dated January 13, 1891, to Central Trust Company of New York, as trustee, being the entire amount of indebtedness secured by said mortgage.

—Rents, issues, profits, tolls and other income:

Subject to previously described mortgages.

—Leases, traffic agreements and trackage rights and contracts.

—Shares of stock.

Subject to liens of certain mortgages.

—Bonds.

Four Per Cent. First Mortgage Gold Bond of the Tyler Southeastern Railway Company, in the principal amount of \$660,000 dated, January 13, 1891, and maturing November 1, 1989, and secured by a mortgage dated January 13, 1891, to The Mercantile Trust Company (now Bankers Trust Company), as trustee, being the entire amount of indebtedness secured by said mortgage.

Subject, however, as to said bonds, to the lien of the above mentioned First Mortgage of St. Louis Southwestern Railway Company, and to the pledge and deposit of said bonds under said First Mortgage.

Also the following described bonds, which are hereby pledged with the Trustees hereunder, viz.:

Four Per Cent. Second Mortgage Gold Income Bond of St. Louis Southwestern Railway Company of Texas, in the principal amount of \$4,722,500, dated January 13, 1891, maturing November 1, 1989, and secured by a mortgage, dated January 13, 1891, to the Central Trust Company of New York, as trustee, and being the entire amount of indebtedness secured by said mortgage.

Four Per Cent. Second Mortgage Gold Income Bond of the Tyler Southeastern Railway Company, in the principal amount of \$330,000, dated January 13, 1891, maturing November 1, 1989, and secured by a mortgage, dated January 13, 1891, to The Mercantile Trust Company (now Bankers Trust Company), as trustee, and being the entire amount of indebtedness secured by said mortgage.

Subject, however, as to the bonds above described, to the liens of the above-mentioned Second Mortgage and First Consolidated Mortgage of St. Louis Southwestern Railway Company, and to the pledge and deposit of said bonds under said Second Mortgage.

Also, all of the following described bonds and stock, which are hereby pledged with the Trustees hereunder, that is to say:

First Mortgage Bonds of the Dallas Terminal Railway and Union Depot Company, in the principal amount of \$731,000, dated April 1,

Subject to
First
Mortgage.

Bonds.

Subject to
liens of certain
other
mortgages.

Bonds and
Stock.

1903, maturing April 1, 1933, and being all of the outstanding bonds of said issue.

First Mortgage Dallas Branch Bonds of St. Louis Southwestern Railway Company of Texas, in the principal amount of \$280,000, dated April 1, 1903, maturing April 1, 1933, and being all of the outstanding bonds of said issue.

First Mortgage Lufkin Extension Bonds of St. Louis Southwestern Railway Company of Texas, in the principal amount of \$292,000, dated August 1, 1903, maturing August 1, 1933, and being all of the outstanding bonds of said issue.

First Mortgage Bonds of the Pine Bluff Arkansas River Railway Company, in the principal amount of \$126,000, dated February 1, 1898, maturing February 1, 1928, and being all of the outstanding bonds of said issue.

Second Mortgage Income Bond Certificates of St. Louis Southwestern Railway Company, in the principal amount of \$6,957,500, dated January 13, 1891, maturing November 1, 1989, out of an authorized and outstanding issue of \$10,000,000, principal amount, of said bond certificates.

93 shares, of the par value of \$100 each, of the capital stock of the Dallas Terminal Railway and Union Depot Company, being all of the outstanding stock (except qualifying shares) of said Company.

1,995 shares, of the par value of \$100 each, of the capital stock of the Pine Bluff Arkansas River Railway Company, being all of the outstanding stock (except qualifying shares) of said Company.

4,535 shares, of the par value of \$100 each, of the capital stock of the Eastern Texas Railroad Company, being all of the outstanding stock (except qualifying shares) of said Company.

Subject, however, as to the bonds and stock above described, to the lien of the above-mentioned First Consolidated Mortgage of St. Louis Southwestern

Railway Company, dated June 1, 1902, and to the pledge and deposit of said bonds and stock under said First Consolidated Mortgage.

Stock.

Also all of the following described stock, which is hereby pledged with and delivered to the Trustees hereunder, that is to say:

4,995 shares, of the par value of \$100 each, of the capital stock of the Gray's Point Terminal Railway Company, being all of the outstanding stock (except qualifying shares) of said Company.

475 shares, of the par value of \$100 each, of the capital stock of the Shreveport Bridge and Terminal Company, being all of the outstanding stock (except qualifying shares) of said Company.

1,495 shares, of the par value of \$100 each, of the capital stock of the Central Arkansas and Eastern Railway Company, being all of the outstanding stock (except qualifying shares) of said Company.

1,374 shares of the par value of \$100 each, of the capital stock of the Stephenville North and South Texas Railway Company, being all of the outstanding stock (except qualifying shares) of said Company.

Also any and all property, real or personal, of every name, kind and nature whatsoever, including stocks and bonds which from time to time hereafter, by delivery or by writing of any kind, for the purposes hereof, may be conveyed, mortgaged, pledged, assigned or transferred by the Railway Company, or by any one in its behalf, to the Trustees, who hereby are authorized to receive any property, at any and all times, as and for additional security for the payment of the bonds issued or to be issued hereunder, and to receive and hold any and all such property upon the trusts and subject to the terms hereof.

Also property, including stocks and bonds, hereafter expressly subjected thereto.

Lien hereof to attach as property is acquired.

And it is covenanted and declared that all railroads, franchises, rolling stock and property, real and personal, of every kind and description, and any interest therein, which by any covenant or provision of this indenture the Railway Company has subjected or agreed to subject to the lien hereof, shall immediately

when acquired by the Railway Company, and subject to the terms and conditions of such acquisition and without any further conveyance, assignment or delivery, become and be subject to the lien of this indenture as fully and completely as though now owned by the Railway Company and expressly and specifically embraced in the foregoing clauses of this indenture; but the Railway Company covenants and agrees that at any and all times it will execute and deliver to the Trustees any and all further conveyances thereof or instruments of further assurance, as the Trustees may reasonably direct or require, for the purpose of expressly and specifically subjecting the same to the lien of this indenture, but it is hereby expressly covenanted and declared that the Railway Company reserves the right to acquire any railroad, branch, extension or equipment, and any stocks, bonds, securities and other property, of any kind or description, free from the lien of this indenture, and any railroad, branch, extension or equipment and any stocks, bonds, securities and other property, of any kind and description, acquired by the Railway Company without the use of bonds or proceeds of bonds issued hereunder, or constructed or acquired by the use of any such bonds or the proceeds of any such bonds as may be delivered to the Railway Company as hereinafter provided in reimbursement of expenditures then already made out of other resources, for any purposes for which bonds are hereinafter provided to be issued, shall be free from the lien of this indenture, unless specifically pledged thereunder by an instrument in writing executed by the Railway Company to the trustees hereof.

Acquisition of property free from lien hereof.

To have and to hold the premises, railways, properties (real and personal), rights, franchises, estates, appurtenances, stocks and bonds hereby conveyed or assigned, or intended to be conveyed or assigned, unto the Trustees, their successors and assigns forever.

Habendum.

Subject, however, as to the properties, both real and personal, severally embraced therein or subject thereto, to the several mortgages or indentures hereinbefore mentioned and to all other existing rights, liens, charges and claims of record upon and against the railways, properties and franchises hereby conveyed and mortgaged, or so intended to be.

In trust, nevertheless, for the common and equal use, benefit and security of all and singular the person

Grant in trust for purposes.

or persons, firm or firms, bodies politic or corporate, who shall from time to time be holders of said bonds or coupons, without preference of any of said bonds over any of the others by reason of priority in the time of issue or negotiation thereof, or otherwise howsoever, subject to the terms, provisions and stipulations in said bonds contained, and for the uses and purposes and upon and subject to the terms, conditions, provisions and agreements in this indenture expressed and declared.

Covenants.

And it is hereby covenanted and declared that all such bonds, which are hereinafter sometimes termed First Terminal and Unifying Mortgage Bonds, are to be executed, authenticated and delivered, and that the mortgaged property and premises are to be held and disposed of by the Trustees subject to the further covenants, conditions, uses and trusts hereinafter set forth; and the Railway Company hereby covenants and agrees to and with the Trustees, and for the benefit of the respective holders from time to time of bonds issued hereunder, as follows, viz.:

Article First.

Section 1. From time to time the First Terminal and Unifying Mortgage Bonds shall be executed on behalf of the Railway Company, and delivered to the Trust Company for authentication by it, and, thereupon, as provided in Article Second hereof and not otherwise, the Trust Company shall authenticate and deliver the same. The amount of the First Terminal and Unifying Mortgage Bonds which may be executed by the Railway Company and authenticated by the Trust Company is limited, so that never at any one time shall there be outstanding under this indenture First Terminal and Unifying Mortgage Bonds for an aggregate principal amount exceeding the sum of one hundred million dollars (\$100,000,000). The First Terminal and Unifying Mortgage Bonds shall bear interest at the rate of five per centum per annum, and such interest shall be payable semi-annually on the first day of January and the first day of July in each year.

In case the officers of the Railway Company who shall have signed and sealed any of the First Terminal and Unifying Mortgage Bonds shall cease to be such

**FORM,
EXECUTION,
DELIVERY,
REGISTRATION
AND EXCHANGE
OF BONDS.**

**Execution,
authentication
and delivery of
bonds.**

**Total
authorized
issue.
\$100,000,000.**

**Rate of
interest.**

**Adoption of
cts of former
officers.**

signed and sealed shall have been actually authenticated and delivered by the Trust Company, such bonds may, nevertheless, be adopted by the Railway Company and be authenticated and delivered and issued as though the persons who signed and sealed such bonds had not ceased to be officers of the Railway Company. The coupons to be attached to such bonds shall be authenticated by the engraved fac-simile signature of the present Treasurer or of any future Treasurer of the Railway Company, and the Railway Company may adopt and use for that purpose the engraved fac-simile signature of any person who shall have been such Treasurer, notwithstanding the fact that he may have ceased to be such Treasurer at the time when such bonds shall be actually authenticated and delivered. Only such bonds as shall bear thereon endorsed a certificate substantially in the form herein-before recited, executed by the Trust Company, shall be secured by this indenture or entitled to any lien, right, or benefit hereunder; and such authentication by the Trust Company upon any such bond shall be conclusive evidence that the bond so authenticated has been duly issued hereunder and that the holder is entitled to the benefit of the trust hereby created. Before authenticating or delivering any coupon bond, all coupons thereon then matured shall be cut off and cancelled and, on its written demand, delivered to the Railway Company. On request of the Railway Company, but within the limitations hereinafter prescribed, First Terminal and Unifying Mortgage Bonds shall be authenticated and delivered hereunder in advance of the registration or recording of this indenture, but the Railway Company, with all convenient speed, shall cause this indenture to be duly recorded.

Signature of coupons.

Authentication.

Authentication before recording.

Registration and transfer books to be kept.

Section 2. The Railway Company will keep, at an office or agency to be maintained by it in the Borough of Manhattan in the City of New York, or at some bank or trust company in said Borough, a sufficient register or registers for the registration and transfer of First Terminal and Unifying Mortgage Bonds, and such register or registers shall at all reasonable times be open for inspection by the Trustees; and, upon presentation for such purpose, the Railway Company will, under such reasonable regulations as it may prescribe,

Subject to the provisions of Section 3 of this Article First, the holder of any coupon First Terminal and Unifying Mortgage Bond may have the ownership thereof registered on said books of the Railway Company at its said office or agency and such registration noted on the bond. After such registration, no transfer shall be valid unless made on said books by the registered holder, in person or by his attorney duly authorized, and similarly noted on the bond. Upon presentation to the bond registrar of the Railway Company, at such office or agency, of any such coupon bond registered as to principal, accompanied by delivery of a written instrument of transfer in the form approved by the Railway Company, executed by the registered holder, such bond shall be transferred upon such register by the registered holder, in person or by attorney duly authorized, and such transfer shall be noted by such bond registrar upon the bond. The registered holder of any such coupon bond, registered as to principal, also shall have the right to cause the same to be registered as payable to bearer, in which case transferability by delivery shall be restored, and thereafter the principal of such bond when due shall be payable to the person presenting the bond; but any such bond registered as payable to bearer may be registered again in the name of the holder with the same effect as a first registration thereof. Successive registrations and transfers as aforesaid may be made from time to time as desired, and each registration of a bond shall be noted by the bond registrar on the bond. Registration of any of the coupon First Terminal and Unifying Mortgage Bonds as to principal, however, shall not affect the negotiability by delivery merely of the coupons belonging to such bond, but every such coupon shall continue to pass by delivery and shall remain payable to bearer.

The holder of any coupon bond or bonds may, at any time, surrender the same with all unmatured coupons thereto appertaining, for cancellation, and receive in exchange therefor a like principal amount in registered bonds without coupons as hereinafter provided, and the registered holder of any registered bond or bonds without coupons, at his option, may at any time surrender the same for cancellation and receive in exchange therefor a like principal amount in coupon bonds as hereinafter provided.

ered bond without coupons shall be transferable only by the registered owner thereof, in person or by his duly authorized attorney, on said books of the Railway Company at its office or agency in the Borough of Manhattan, in the City of New York, and, upon the surrender and cancellation thereof, one or more new registered bonds without coupons will be issued to the transferee in exchange therefor as hereinafter provided.

Exchange of registered bonds for coupon bonds.

The registered bonds without coupons shall be of the denomination of \$1,000, or of such multiples hereof, as the board of directors of the Railway Company may, by resolution, from time to time authorize. The registered bonds shall respectively be dated the day of delivery, and shall bear interest from the first day of January or July, as the case may be, next preceding the date of the bonds, unless dated January 1st or July 1st, and in that event from the date thereof. Whenever any bonds or bonds shall be issued originally as a registered bond or bonds without coupons, there shall be reserved by the Railway Company, unissued, an aggregate face amount of coupon bonds, equal to the aggregate face amount of the registered bond or bonds so issued, and the serial number or numbers of the coupon bonds so reserved unissued shall by the Railway Company be endorsed on such registered bond or bonds. Whenever any such registered bond or bonds shall be surrendered for transfer, the Railway Company shall issue and the Trust Company shall authenticate and deliver, upon surrender and cancellation of the bond or bonds transferred, a new registered bond or bonds for a like principal amount, which shall have endorsed thereon the same serial number or numbers of coupon bonds which were endorsed upon the registered bond or bonds so surrendered and cancelled. The holder of any registered bond may also exchange such bond, upon surrender and cancellation thereof, for coupon bonds, a like principal amount, bearing all unmatured coupons for interest, and bearing the serial number or numbers endorsed upon the registered bond so surrendered and cancelled. Whenever any coupon bond or bonds, together with all unmatured coupons thereto belonging, shall be surrendered for exchange for registered bonds without coupons, the Railway Company shall issue and the Trust Company shall authenticate

Transfer of registered bonds without coupons.

Registered bonds.

Reservation of coupon bonds against registered bonds.

Manner of transfer.

Manner of exchange.

Surrendered
bonds to be
canceled.

Charge for
exchange or
transfer.

Ownership of
bonds and
coupons.

principal amount of such registered bonds, which shall have endorsed thereon the serial number or numbers borne by the coupon bond or bonds so surrendered for exchange. In every case of such exchange, the Trust Company forthwith shall cancel the surrendered bond or bonds and coupons, and upon demand shall deliver the same to the Railway Company.

For any exchange of coupon bonds for registered bonds without coupons, or of such registered bonds for coupon bonds, and for any transfer of registered bonds without coupons, the Railway Company, at its option, may require the payment of a sum sufficient to reimburse it for any stamp tax or other governmental charge, and may also require the payment of a further sum not exceeding five dollars for each new bond issued upon such transfer or exchange.

Section 3. As to all registered bonds without coupons and all coupon bonds registered as to principal, the person in whose name the same shall be registered on the books of the Railway Company shall, for all purposes of this indenture, be deemed and regarded as the owner thereof, and thereafter payment of or on account of the principal of such bond, if it be a registered coupon bond, and of the principal and interest, if it be a registered bond without coupons, shall be made only to or upon the order of such registered holder thereof, but such registration may be changed as above provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such bonds to the extent of the sum or sums so paid. The Railway Company and the Trust Company may deem and treat the bearer of any coupon bond which shall not at the time be registered as to principal and the bearer of any coupon for interest on any coupon bond, whether such bond shall be registered or not, as the absolute owner of such bond or coupon for the purpose of receiving payment thereof, and for all other purposes whatsoever, and the Railway Company and the Trust Company shall not be affected by any notice to the contrary.

Coupon bonds
where
payable and
in what
currencies.

Section 4. All or any of the coupon bonds issued hereunder from time to time shall be payable at the office or agency of the Railway Company in the Borough of Manhattan in the City and State of New York, or, at the option of the holders of said coupon bonds,

in the cities and countries, respectively, and in the respective currencies stated in the form of coupon bond hereinbefore set forth, but the face amount of each of such coupon bonds shall be \$1,000 in United States gold coin of the standard of weight and fineness existing on January 1, 1912, or the equivalent thereof, calculated at the rates of exchange stated in the form of coupon bond hereinbefore set forth. The principal amount of First Terminal and Unifying Bonds which the Railway Company shall be entitled to issue under the provisions of this indenture shall be ascertained at the like rate or rates of exchange, and, for all purposes of this indenture and of said bonds, the indebtedness represented by said bonds in United States gold coin, as aforesaid, shall be calculated at the like rate or rates of exchange.

Section 5. Until definitive engraved First Terminal and Unifying Mortgage Bonds can be prepared, the Railway Company may execute and, upon the request of the Railway Company, the Trust Company shall authenticate and deliver, in lieu of such definitive engraved bonds and subject to the same provisions, limitations and conditions, temporary bonds of any denomination, substantially of the tenor and form of the bonds hereinbefore recited, but without coupons, and with appropriate omissions, insertions and variations, as may be required.

Temporary bonds.

Upon surrender of such temporary bonds for exchange, the Railway Company, at its own expense, shall prepare and execute, and, upon cancellation of such surrendered bonds, the Trust Company shall authenticate and shall deliver in exchange therefor, definitive engraved First Terminal and Unifying Mortgage Bonds, for the same principal sum in the aggregate as the temporary bonds surrendered and otherwise in accordance with said temporary bonds, and, until so exchanged, the temporary bonds shall, in all respects, be entitled to the same lien and security of this indenture as the definitive engraved bonds issued and authenticated hereunder, and interest, when and as payable, shall be paid and endorsed thereon.

Section 6. In case any coupon bond issued under this indenture, with the coupons thereto appertaining, or any registered bond without coupons, shall become mutilated or be destroyed or lost, the Railway Company, in its discretion, may execute, and thereupon

Replacing bonds
mutilated,
destroyed or
lost.

the Trust Company shall authenticate and deliver, a new bond of like tenor and date, bearing the same serial number, in exchange and substitution for and upon cancellation of the mutilated coupon bond and its coupons or the mutilated registered bond, or in lieu of and substitution for, the coupon bond and its coupons or the registered bond so destroyed or lost. The applicant for such substituted bond shall furnish the Railway Company and the Trust Company evidence of the destruction or loss of such coupon bond and its coupons, or of such registered bond so destroyed or lost, which evidence shall be satisfactory to the Railway Company and the Trust Company, respectively, in their discretion; and said applicant shall also furnish indemnity satisfactory to the Railway Company and the Trust Company in their discretion, and shall comply with such other reasonable regulations as the Railway Company or the Trust Company may prescribe. The Trust Company shall incur no liability for anything done under this Section 6.

Article Second.

The Trust Company shall authenticate the First Terminal and Unifying Mortgage Bonds and deliver the same as hereinafter in this Article Second provided.

Section 1. Two million six hundred and eighty-five thousand Dollars (\$2,685,000), face amount, of First Terminal and Unifying Mortgage Bonds shall, as soon as may be after the execution and delivery of this indenture, and without any further action on the part of the Railway Company, be authenticated by the Trust Company and be delivered to the Railway Company, upon the written order of the Railway Company signed or purporting to be signed by its President or a Vice-President and by its Treasurer or an Assistant Treasurer, under its corporate seal. The bonds so delivered to the Railway Company or their proceeds, shall be held and may be used by it in reimbursement of expenditures or advances heretofore made out of its revenues for betterments and improvements and for its general corporate purposes, free and discharged from any restrictions.

Section 2. Two million Dollars (\$2,000,000), face amount, of First Terminal and Unifying Mortgage

DEPOSITS FOR
WHICH BONDS
ARE RESERVED

2,685,000 of
bonds in
reimbursement
expendi-
tures and
advances
made out of
revenues for
betterments
and
improvements.

2,000,000 of
bonds for
mineral

of this indenture and upon the conveyance to the Trustees by a good and sufficient deed of conveyance, free from all liens and encumbrances, and upon the trusts and subject to the terms and conditions set forth in this indenture of the following described real estate situate in the City of St. Louis, State of Missouri, for use as terminal property and facilities, to wit:

All of city blocks Nos. two hundred and thirty (230), two hundred and thirty-one (231) and two hundred and thirty-two (232) in the City of St. Louis, Missouri, bounded on the north by Florida Street, on the west by First Street, on the east by Lewis Street, and on the south by Dickson Street,

shall be authenticated by the Trust Company and delivered to the grantor or grantors named in said deed of conveyance, or upon the written order of said grantor or grantors, said bonds in said amount of Two Million Dollars (\$2,000,000), being the amount thereof required in order to acquire such property.

Section 3. Two hundred and fifty thousand Dollars (\$250,000), face amount, of First Terminal and Unifying Mortgage Bonds immediately upon the execution and delivery of this indenture and upon the conveyance to the Trustees by a good and sufficient deed of conveyance, free from all liens and encumbrances, and upon the trusts and subject to the terms and conditions set forth in this indenture, of the following described real estate situate in the City of Fort Worth, State of Texas, for use as terminal property and facilities, to wit:

\$250,000 of
bonds for
terminal
property at
Fort Worth.

All that part of Block No. 91 of Terry's Sub-division bounded on the west by Terry Street, on the north by East Fifth Street, on the east by that part of Elm Street between East Fifth and Sixth Streets, as originally platted, and on the south by East Sixth Street, as originally platted.

All that part of Block No. 90 of Terry's Sub-division bounded on the west by that portion of Elm Street lying between East Fifth and East Sixth Streets, as originally platted,

that portion of Crump Street lying between East Fifth and East Sixth Streets, as originally platted, and on the south by East Sixth Street as originally platted.

Also that portion of Block No. 90 of Terry's Subdivision bounded on the north by East Fifth Street, on the west by that portion of Crump Street lying between East Fifth and East Sixth Streets, as originally platted, on the south by East Sixth Street, as originally platted, and on the east by the east boundary line of said block No. 90, adjoining Block No. 2 of the More-Thornton Company strips.

All that portion of Block No. 2 of the More-Thornton Company strips bounded on the north by East Fifth Street, on the west by the west boundary line of Terry's Subdivision of Block No. 90, on the south by East Sixth Street, as originally platted, and on the east by Harding Street, as originally platted, with the exception of Lot No. 5, of said Block No. 2, of the More-Thornton & Company strips, fronting about twenty-five feet east of what was formerly known as Harding Street, as originally platted, and bounded on the north by East Fifth Street.

All that part of Sixth Street in the City of Ft. Worth, Texas, which lies east of its intersection with the east line of Terry Street to the Eastern extremity of said Sixth Street, and all those parts and portions of Elm Street, Crump Street and Harding Street, and what is known as Dunn's Alley, which extends or lies south of the south boundary line of Fifth Street and the north line of Sixth Street; which property was formerly embraced in the property of the streets above described which streets were closed and vacated by an ordinance passed by the City Council of the City of Ft. Worth, Tex., on the 12th day of November, 1906, and is recorded in Ordinance Book E, page 177, on November 16th, 1906.

shall be authenticated by the Trust Company and delivered to the grantor or grantors named in said deed of conveyance, or upon the written order of said grantor or grantors, said bonds in said amount of

Hundred and Fifty Thousand Dollars (\$250,000),
the amount thereof required in order to acquire
a property.

the Railway Company shall furnish to the Trust
Company the written opinion of counsel for the Rail-
way Company, to the effect that said deeds of con-
veyance to the Trustees, under this Section 3 and
under Section 2 of this Article Second, are in all re-
spects sufficient to convey the title to the premises, in
the sections described, to the Trustees, free from all
liens and encumbrances, and to subject the said
premises to the lien of this indenture as a first lien
thereon, and such opinion may be accepted by the
Trustees as conclusive evidence of the facts therein
stated and as full authority and protection to the
Railway Company for its action on the faith thereof.

Opinion of
counsel.

Section 4. Two million, one hundred and sixty-five
thousand Dollars (\$2,165,000), face amount, of First
Mortgage Bonds, or so many
thereof as may be required, shall be reserved to be is-
sued and delivered for the purpose of paying or ac-
quiring by purchase, or otherwise, or of reimbursing
the Railway Company for expenditures made by it
prior to January 1, 1912, in the payment or acquisition
of the following described equipment obligations of
the Railway Company outstanding on January 1, 1912,
being all of the equipment obligations of the fol-
lowing series then outstanding:

\$2,165,000 of
bonds for
equipment
obligations.

\$139,619.40, face amount, of equipment notes,
Series C-21, issued under a conditional sale
agreement between American Car and Foundry
Company and St. Louis Southwestern Railway
Company, dated June 7, 1909.

\$76,731.84, face amount, of equipment notes,
Series C-22, issued under a conditional sale
agreement between American Car and Foundry
Company and St. Louis Southwestern Railway
Company, dated August 13, 1909.

\$276,495, face amount, of equipment notes,
Series H-1, issued under a conditional sale
agreement between Burnham, Williams & Co.
and St. Louis Southwestern Railway Company,
dated February 20, 1907.

\$1,672,000, face amount, of equipment notes,
Series B, issued under a conditional sale agree-

ment between Bankers' Trust Company and St. Louis Southwestern Railway Company, dated January 20, 1911.

Whenever the Railway Company shall deliver, or shall cause to be delivered, to the Trust Company any of the above described equipment obligations of the Railway Company now outstanding, together with any unmatured interest coupons thereto belonging, the Trust Company shall receive the same, and, in exchange therefor, shall authenticate and deliver to the Railway Company, or upon its order, bonds secured by this indenture and reserved under this Section 4 in a face amount equal to the face amount of the equipment obligations so received by the Trust Company.

All equipment obligations, with all unmatured coupons thereto belonging, shall, on or prior to the delivery thereof to the Trust Company, be canceled.

Section 5. Four hundred thousand Dollars (\$400,000), face amount, of First Terminal and Unifying Mortgage Bonds shall be reserved to be issued and delivered for the purpose of securing, by purchase or exchange or otherwise, a like face amount of First Refunding and Extension Mortgage Bonds of the Gray's Point Terminal Railway Company issued under the First Refunding and Extension Mortgage of said last-mentioned Railway Company to Bowling Green Trust Company (now The Equitable Trust Company of New York) and S. W. Fordyce, as trustees, dated August 1, 1906, to secure an authorized issue of \$4,000,000, face amount, of said bonds.

Whenever the Railway Company shall deliver or shall cause to be delivered to the Trust Company any of said First Refunding and Extension Mortgage Bonds of the Gray's Point Terminal Railway Company up to the aggregate face amount of \$400,000 thereof, with all unmatured coupons thereto annexed, in the case of coupon bonds, the Trust Company shall receive and hold the same, and, in exchange therefor, shall authenticate and deliver to the Railway Company, or upon its order, bonds secured by this indenture and reserved under this Section 5 in a face amount equal to the face amount of said First Refunding and Extension Mortgage Bonds of Gray's Point Terminal Railway Company so received by the Trust Company.

400,000 of
bonds to
secure a like
face amount
of First
Refunding and
Extension
Mortgage
bonds of Gray's
Point Terminal
Railway
Company.

Section 6. Thirty-eight million five hundred thousand Dollars (\$38,500,000), face amount, of First Terminal and Unifying Mortgage Bonds shall be reserved to be issued and delivered for the purpose of refunding, purchasing, taking up or paying, at, before or after maturity, the following bonds, which are hereafter called collectively the "underlying bonds," to wit:

\$38,500,000 of bonds to refund underlying bonds.

(a) \$25,000,000, face amount, of First Consolidated Mortgage Bonds of the Railway Company, maturing June 1, 1932, the same being the total authorized issue thereof, secured by the First Consolidated Mortgage of said Railway Company, dated June 1, 1902, to Bowling Green Trust Company (now The Equitable Trust Company of New York), and David R. Francis, as trustees.

(b) \$500,000, face amount, of First Mortgage Bonds of Gray's Point Terminal Railway Company, maturing December 1, 1947, the same being the total authorized issue thereof, secured by the First Mortgage of said Terminal Company, dated December 1, 1897, to St. Louis Trust Company as trustee.

(c) \$3,000,000, face amount, of First Mortgage Bonds of The Central Arkansas and Eastern Railroad Company, maturing July 1, 1940, the same being the total authorized issue thereof, secured by the First Mortgage of said Railway Company, dated July 1, 1910, to St. Louis Union Trust Company as trustee.

(d) \$10,000,000, face amount, of First Mortgage Bonds of Stephenville North & South Texas Railway Company, maturing July 1, 1940, the same being the total authorized issue thereof, secured by the First Mortgage of said Railway Company, dated July 1, 1910, to Commonwealth Trust Company as trustee.

Whenever the Railway Company shall deliver or shall cause to be delivered to the Trust Company, in bearer form or accompanied by proper instruments of assignment and transfer, and whether at, before or after the maturity thereof, any of the said "underlying bonds" then outstanding, with all coupons, if any, thereto belonging and unmatured at the time of

Issue of bonds in exchange for underlying bonds.

such delivery, the Trust Company shall receive the same and, in exchange therefor (except in the case of payment by the Trust Company of cash deposited as hereinafter provided), shall authenticate and deliver to the Railway Company, or upon its order, First Terminal and Unifying Mortgage Bonds in a face amount equal to the face amount of the "underlying bonds" so received by the Trust Company.

Underlying bonds to be held alive and uncanceled by Trust Company until all are received.

All "underlying bonds," with all unmatured coupons thereto belonging, received by the Trust Company as aforesaid, shall be held by it alive and uncanceled as a part of the security for the First Terminal and Unifying Mortgage Bonds issued and outstanding under this indenture, until all "underlying bonds" of the same series or issue have been so received by the Trust Company.

Whenever all "underlying bonds" of any series or issue shall have been paid or canceled or delivered to the Trust Company hereunder, the Railway Company will cause the mortgage securing said "underlying bonds," so canceled, paid or delivered to the Trust Company, to be satisfied and discharged, and the Trust Company will, upon the written request of the Railway Company and for the purpose of securing the satisfaction and discharge of any such mortgage, cancel and surrender all of the "underlying bonds" so held by it. Upon the satisfaction and discharge of any such mortgage the Railway Company will transfer and deliver to the Trust Company all shares of stock, bonds or other obligations then held undisposed of by the trustee of any mortgage so satisfied and discharged, to be held by the Trust Company upon the trusts and for the purposes in this indenture declared and as a part of the mortgaged premises.

Cancellation and surrender of underlying bonds.

Sale of bonds to acquire underlying bonds.

At any time or times at or after the maturity of any "underlying bonds," or within twelve months before such maturity, the Railway Company may sell First Terminal and Unifying Mortgage Bonds reserved under this Section 6, in order to provide, in whole or in part, the means to pay or purchase any of the "underlying bonds" so matured or maturing which shall not theretofore have been delivered to the Trust Company and be held hereunder; and the Trust Company shall authenticate and deliver to the Railway Company, or upon its order, First Terminal

and Unifying Mortgage Bonds in a face amount equal to the face amount of the "underlying bonds" to be paid or purchased as aforesaid, provided that an amount of money equal to the face amount of the said "underlying bonds," so to be paid or purchased, together with the accrued interest thereon, shall simultaneously be deposited with the Trust Company. Out of the moneys so received by the Trust Company it shall, on demand of the Railway Company and upon delivery to the Trust Company of the "underlying bonds," so paid or purchased by the Railway Company, in bearer form or accompanied by proper instruments of assignment and transfer, pay to the Railway Company, or upon its order, a sum equal to the face amount of such "underlying bonds" so paid or purchased, and also the accrued interest thereon deposited with the Trust Company as aforesaid. A certificate, signed or purporting to be signed by the President or a Vice-President and by the Treasurer or an Assistant Treasurer of the Railway Company under its corporate seal, as to any facts appertaining to the right to authenticate and deliver the First Terminal and Unifying Mortgage Bonds under this Section 6, or to pay over their proceeds as aforesaid, may be accepted by the Trust Company as conclusive evidence of such facts and as full authority and protection to the Trust Company for its action on the faith thereof.

Certificate to protect Trust Company.

Section 7. Fifty-four million Dollars (\$54,000,000), face amount, of First Terminal and Unifying Mortgage Bonds, being the remainder of said bonds authorized to be issued under this indenture, shall be authenticated and delivered by the Trust Company from time to time for one or more of the purposes mentioned in Section 8 of this Article, but subject to the restrictions therein provided, or for one or more of the purposes mentioned in Section 9 of this Article, it subject to the restrictions therein provided; provided, however, that the bonds reserved under this Section 7 shall not be authenticated and delivered, for the purposes mentioned in paragraphs (a), (b), (c), (d) and (e) of Section 8 of this Article, at a greater cumulative annual rate for each calendar year beginning January 1, 1912, and ending December 31, 1921, than \$2,000,000, face amount, of said bonds, and at a greater cumulative annual rate for each calendar year beginning January 1, 1922, and

\$54,000,000
of bonds
reserved
purposes.

Restrictions
as to issue.

ending December 31, 1951, than \$3,000,000, face amount, of said bonds, and for the purposes mentioned in paragraph (f) of Section 8 of this Article not exceeding in the aggregate \$800,000, face amount, of said bonds, for the calendar year beginning January 1, 1912, and not at a greater cumulative annual rate for each calendar year beginning January 1, 1913, and ending December 31, 1951, than \$500,000, face amount, of said bonds; but any portion of said bonds, at the rates aforesaid, which shall not be authenticated and delivered in any calendar year, may be authenticated and delivered at any time thereafter in addition to the bonds which may be authenticated and delivered in any subsequent year.

Bonds reserved
under Section 7
issuable for:

Section 8. The First Terminal and Unifying Mortgage Bonds reserved under the provisions of Section 7 of this Article may, from time to time, be authenticated and delivered by the Trust Company to the Railway Company, or upon its order, as provided in this Section 8, but subject to the restrictions hereinafter in this Section 8 provided, and only for some one or more of the following purposes, to wit:

(a) Improvements and betterments.

(a) The construction, reconstruction and improvement, after January 1, 1912, of tunnels, trestles and bridges, ballasting of tracks, the widening of cuts and fills, the construction of block and other signals, the reduction of grades and curvature, the construction, reconstruction, and improvement of telegraph and telephone lines, machinery, additional side tracks, spur tracks or passing tracks, the purchase of heavier rails, additional or improved track fastenings and appurtenances and improved frogs or switches, and other additions, improvements and permanent betterments upon, along or appertaining to, or for use in connection with, any lines of railroad at the time owned by the Railway Company and which shall be subject to this indenture, or which at the time of such construction or acquisition shall be leased by the Railway Company for a term expiring subsequent to January 1, 1952, and the leasehold interest of the Railway Company in which shall be subject to this indenture, or shall be owned or shall be leased for a term expiring subsequent to January 1, 1952,

by any other company all of whose capital stock (except qualifying shares) shall be owned by the Railway Company and assigned or pledged under this indenture or under any of its existing mortgages; or

(b) The construction or acquisition after January 1, 1912, by the Railway Company or by any other company, all of whose capital stock (except qualifying shares) shall be owned by the Railway Company and assigned or pledged under this indenture or under any of its existing mortgages, or by any other company whose lines of railroad, at the time of such construction or acquisition, shall be leased by the Railway Company for a term expiring subsequent to January 1, 1952, and the leasehold interest of the Railway Company in which shall be subject to this indenture, or by any other company all of whose railroads and property, at the time of such construction or acquisition, shall be leased for a term expiring subsequent to January 1, 1952, by any other company, all of whose capital stock (except qualifying shares) shall be owned by the Railway Company and assigned or pledged under this indenture or any of its existing mortgages, of additional main track or double-track passenger and freight stations, shops, roundhouses, warehouses, wharves, docks and other structures, terminals and terminal and station facilities and yards, the acquisition of any additional grounds and properties for terminal purposes, and the construction or erection on any grounds and properties so acquired, of freight houses, warehouses or other improvements or terminal facilities, and the construction or acquisition of railroad bridges or transfer facilities across navigable waters.

(b) Construction or acquisition of additional track, structures and terminal facilities.

(c) The acquisition of all of the mortgage bonds, if any, and all of the shares of the capital stock (except qualifying shares) of any corporation or corporations owning any property of the character mentioned in the foregoing paragraph (b).

(c) Acquisition of bonds and stock of corporations.

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(d) Acquisition of \$2,450,000 bonds of Gray's Point Terminal Railway Company.

(d) The acquisition of all or any part of \$2,450,000, face amount, of First Refunding and Extension Mortgage Bonds of the Gray's Point Terminal Railway Company in addition to the \$400,000 face amount of said bonds, for which a like face amount of bonds secured by this indenture is reserved to be authenticated and delivered under the provisions of Section 5 of this Article Second, and, after the acquisition and deposit with the Trust Company of \$2,850,000, face amount, of First Refunding and Extension Mortgage Bonds of the Gray's Point Terminal Railway Company, the construction or acquisition by said company of any improvements, betterments, extensions or other property, of the character mentioned in the foregoing clauses (a) and (b) of this Section 8.

(e) Reimbursement of expenditures made for above purposes.

(e) To reimburse the Railway Company for any expenditures made or advanced by it, after January 1, 1912, for any of the aforesaid purposes.

(f) Construction or acquisition of rolling stock and equipment.

(f) The construction or acquisition of locomotives, cars and other rolling stock and equipment.

Restrictions:

The restrictions subject to which bonds shall from time to time be authenticated and delivered under this Section 8 are as follows:

—certified copy of resolution.

(1) Before authenticating and delivering bonds under the provisions of this Section 8, there shall be delivered to the Trust Company a certified copy of a resolution of the Board of Directors or Executive Committee of the Railway Company calling for the authentication and delivery of a specified amount of said bonds, and, unless required, for reimbursement of the Railway Company in respect of previous expenditures or advances, directing the officers of the Railway Company to set aside said bonds or their proceeds, separate and apart from any other assets and funds of the Railway Company, and to use the same only for purposes authorized by this Section eight.

(2) In every instance, before authenticating or delivering any of the bonds under this Section 8, the Trust Company shall require the Railway Company to furnish, in addition to said certified copy of a resolution of its Board Directors or Executive Committee, a certificate or certificates, signed or purporting to be signed, first, by the President or a Vice-President, and, second, by the Auditor or Treasurer or Assistant Treasurer of the Railway Company under its corporate seal, stating:

—certificate
of officers

(a) That specified amounts of money have been actually expended, or specified absolute money liabilities have been actually incurred after January 1, 1912, and within two years prior to the date of said certificate, for purposes authorized by this Section 8, or some one or more of them, indicating the particular property acquired or constructed or contracted for (specifying in the case of rolling stock and equipment the character, amount, distinguishing marking and numbering of each piece thereof), and whether acquired, constructed or contracted for by or on behalf of the Railway Company or any other and what other company, and briefly describing, as the case may be, the location of the passenger and freight stations, shops, warehouses, roundhouses, wharves, docks and other structures constructed, acquired or contracted for, or the location and character of the terminals and terminal and station facilities and yards constructed, acquired or contracted for, and the location of any real estate or other properties acquired or contracted for, or the amount or class of betterments and improvements made or contracted for, and specifying the amount of money used or applied for every such purpose.

(b) That the property acquired, constructed or contracted for is not known or believed to be subject to any lien or charge except undetermined liens or charges incident to construction, and except the liens of the mortgages securing the "underlying bonds,"

or the liens of other existing mortgages of the Railway Company, or some one or more of them, and except as otherwise specified in such certificate.

(c) That the price paid or liability incurred for such construction or acquisition was not in excess of the fair value and actual cash cost of the property acquired or contracted for, or work done or to be done, and that no part thereof has been included in any previous certificate made under any provisions of this indenture, or has been reimbursed to the Railway Company out of moneys or bonds received from the Trust Company under any of the provisions of this indenture or any other mortgage of the Railway Company constituting a lien upon the premises.

(d) In case of the acquisition of capital stock or bonds or other indebtedness of other corporations such certificate shall state the actual amount of money expended or of obligation incurred by the Railway Company in the acquisition of such stock or bonds or other indebtedness except that in the case of the acquisition of First Refunding and Extension Mortgage Bonds of the Gray's Point Terminal Railway Company said certificate shall state the face amount of said bonds so acquired, and in the case of shares of stock of any depot, terminal or transfer company, or other company having the right to furnish to the Railway Company station, terminal and transfer facilities, shall also state that the Railway Company has the right to use the facilities of such depot, terminal or transfer company.

(e) That the amounts so expended or liabilities so incurred have not been charged, in any annual report of the Railway Company or other company making such expenditures or incurring such liabilities, or in any report made by the Railway Company or any such other company to the Interstate Commerce Commission, to operating expenses or the expense of maintenance, and that such expendi-

tures or liabilities are properly chargeable, under the rules and regulations prescribed by the Interstate Commerce Commission, to capital account.

Any such certificate under this Section 8 may also state any other facts pertaining to the right to authenticate or deliver bonds hereunder.

In the case of the acquisition of capital stock or bonds of other corporations there shall be delivered to the Trust Company all bonds so acquired and also all certificates representing shares of stock so acquired, properly assigned in blank for transfer; and the Railway Company shall execute, or shall cause to be executed, any conveyances or instruments of further assurance that may be necessary for the purpose of effectually subjecting to the lien and operation of this indenture any such shares of stock or bonds so acquired by it.

The Railway Company shall also execute, or shall cause to be executed, any conveyances or instruments of further assurance that may be necessary for the purpose of effectually subjecting to the lien and operation of this indenture any new property acquired by the Railway Company by the use of the bonds secured by this indenture or the proceeds of said bonds, but, in the case of the use of said bonds or their proceeds in the purchase or acquisition of locomotives, cars and other rolling stock and equipment, the Railway Company shall cause the title to said rolling stock and equipment to be conveyed to the Trustees of this indenture, upon the trusts and subject to the provisions hereof, or to be otherwise subjected to the lien of this indenture as a first lien thereon.

Upon receipt by the Trust Company of the resolutions, statements and certificates under the foregoing provisions of this section, the Trust Company shall authenticate and deliver to the Railway Company, or upon its order, a principal amount of bonds reserved under this Section 8 of this Article within the limitations prescribed in Section 7 of this Article equal to the amount of expenditures and liabilities or the face amount of said First Refunding and Extension Mortgage Bonds of the Gray's Point Terminal Railway Company stated in said certificates; and such resolutions, statements and certificates, respec-

stocks and bonds acquired to be delivered to Trust Company and subjected to lien hereof.

—Instruments of conveyance.

—authentication and delivery of bonds to cover expenditures.

tively, may be accepted by the Trust Company as conclusive evidence of the facts therein referred to and as full authority and protection to the Trust Company for its action on the faith thereof.

Bonds reserved
under Section 7
issuable for:

Section 9. The First Terminal and Unifying Mortgage Bonds reserved under the provisions of Section 7 of this Article may, from time to time, be authenticated and delivered by the Trust Company to the Railway Company, or upon its order, as provided in this Section 9, but subject to the restrictions hereinafter in this Section 9 provided, and only, for some one or more of the following purposes, to wit:

(a) Construction or acquisition of extensions or branches; acquisition of bonds and stock of corporations owning extensions and branches.

(a) The construction or acquisition, after January 1, 1912, by the Railway Company, free from all liens or encumbrances save only the lien of this indenture, or the construction or acquisition, after January 1, 1912, by any other company all of whose capital stock (except qualifying shares) and all of whose mortgage bonds, if any, shall be owned by the Railway Company and pledged under this indenture and held by the Trust Company hereunder, of lines of railroad constituting extensions or branches of the lines of railroad owned by the Railway Company and subject to this indenture, or owned by any other company or companies all of whose capital stock (except qualifying shares) shall be owned by the Railway Company and assigned or pledged under this indenture or under any of its existing mortgages, or the acquisition of all the mortgage bonds, if any, and all of the shares of the capital stock (except qualifying shares) of any corporation or corporations owning any such extension or branch.

(b) Reimbursement of expenditures made for above purposes.

(b) To reimburse the Railway Company for any expenditures made or advanced by it for any of the aforesaid purposes subsequent to January 1, 1912.

Restrictions:

The restrictions subject to which bonds shall, from time to time, be authenticated and delivered under this Section 9 are as follows:

1. Before authenticating and delivering bonds under the provisions of this Section 9 there shall be delivered to the Trust Company a certified copy of a

certified copy
of resolution.

resolution of the Board of Directors or Executive Committee of the Railway Company calling for the authentication and delivery of a specified amount of said bonds, and, unless required for reimbursement of the Railway Company in respect of previous expenditures or advances, directing the officers of the Railway Company to set aside such bonds or their proceeds, separate and apart from any other assets of the Railway Company and to use the same only for the purposes authorized by this Section 9.

2. In every instance, before authenticating or delivering any of the bonds under this Section 9, the Trust Company shall require the Railway Company to furnish, in addition to said certified copy of a resolution of its Board of Directors or Executive Committee, a certificate or certificates signed or purporting to be signed, first, by the President or a Vice-President and, second, by the Auditor or Treasurer or Assistant Treasurer of the Railway Company under its corporate seal stating:

—certificate of officers.

(a) That specified amounts of money have been actually expended, or specified absolute money liabilities have been actually incurred after January 1, 1912, and within two years prior to the date of said certificate, for purposes authorized by this Section 9, or for some one or more of them, briefly describing, as the case may be, the mileage and termini of any lines of railroad so constructed or acquired or contracted for, or the mortgage bonds and shares of capital stock of any corporation or corporations so acquired or contracted for, and a brief description of the lines of railroad owned by any such corporation or corporations, and specifying the amount of money used or applied for every such purpose or the amount of absolute money liability incurred for every such purpose.

(b) If the property so constructed or acquired or contracted for, forming the subject of such certificate, be a line or lines of railroad, that such property is not known or believed to be subject to any lien or charge except undetermined liens or charges incident to construction.

(c) If the property so acquired or contracted for, forming the subject of such certificate, be the mortgage bonds or shares of capital stock, or both, of any corporation or corporations, that such bonds or stock, or both, are all of the mortgage bonds, if any, and all of the capital stock (except qualifying shares) of such corporation issued and outstanding.

(d) That the price paid or liability incurred for such construction or acquisition was not in excess of the fair value and actual cash cost of the property acquired or contracted for, or work done or to be done, and that no part thereof has been included in any previous certificate made under any provision of this indenture or has been reimbursed to the Railway Company out of moneys or bonds received from the Trust Company under any provisions of this indenture or of any other mortgage of the Railway Company constituting a lien upon the premises.

(e) In case of the acquisition of the capital stock or bonds of other corporations, such certificate shall state the actual amount of money expended or of obligation incurred in the acquisition of such stock or bonds.

(f) That the amounts so expended or liabilities so incurred have not been charged in any annual report of the Railway Company or other company making such expenditures or incurring such liabilities, or in any report made by the Railway Company or any such other company to the Interstate Commerce Commission, to operating expenses or the expense of maintenance; and that such expenditures or liabilities are properly chargeable, under the rules and regulations prescribed by the Interstate Commerce Commission, to capital account.

Any such certificate under this Section 9 may also state any other facts pertaining to the right to authenticate or deliver bonds hereunder.

In the case of the acquisition of capital stock or bonds of other corporations there shall be delivered to the Trust Company all bonds so acquired and also

all certificates representing shares of stock so acquired; properly assigned in blank for transfer; and the Railway Company shall execute or shall cause to be executed any conveyances or instruments of further assurance that may be necessary for the purpose of effectually subjecting to the lien and operation of this indenture any such shares of stock or bonds so acquired by it.

The Railway Company covenants forthwith, upon the acquisition or construction thereof by it, to execute or cause to be executed any conveyance or instrument of further assurance that may be necessary for the purpose of effectually subjecting to the lien and operation of this indenture, as a first lien, any extension or additional lines of railway so constructed or acquired by the Railway Company, and shall furnish to the Trust Company the written opinion of counsel of the Railway Company to the effect that such conveyances or other instruments are sufficient for such purpose, or that no conveyance or instrument of further assurance is necessary for the purposes aforesaid, and also the written opinion of counsel of the Railway Company to the effect that any such new property so acquired can be lawfully acquired by the Railway Company and be subjected to the lien hereof as a first lien thereon.

Upon receipt by the Trust Company of the resolutions, statements, certificates and opinion under the foregoing provisions of this section, the Trust Company shall authenticate and deliver to the Railway Company, or upon its order, a principal amount of bonds reserved under this Section 9 of this Article equal to the amount of expenditures and liabilities stated in said certificate or certificates; and such resolutions, statements, certificates and opinion, respectively, may be accepted by the Trust Company as conclusive evidence of the facts therein referred to and as full authority and protection to the Trust Company for its action on the faith thereof.

Section 10. All bonds of other corporations which shall be acquired and which shall be delivered to the Trust Company under the foregoing Sections 8 and 9 of this Article Second, with all unmatured coupons thereto belonging, shall be held by the Trust Company alive and uncanceled as a part of the security for

—Instruments
of conveyance.

—opinion of
counsel.

—authenti-
cation and
delivery of
bonds to cover
expenditures.

Bonds of other
corporations to
be held by
Trust Company.

the First Terminal and Unifying Mortgage Bonds issued and outstanding under this indenture.

Orders for the purpose of obtaining authentication and delivery of bonds.

Section 11. Whenever the terms of any section of this Article require an order from the Railway Company to be delivered to the Trust Company for the purpose of obtaining the authentication and delivery of First Terminal and Unifying Bonds, such order shall be sufficient if signed or purporting to be signed on behalf of the Railway Company under its corporate seal by its President or a Vice-President or by some other officer of the Railway Company appointed for the purpose, and also by its Secretary or an Assistant Secretary or its Treasurer or an Assistant Treasurer, and if it shall state the principal amount of bonds to be delivered, the section of this Article under which such bonds are included, and the person or persons to whom, or the firm or corporation to which, such bonds are to be delivered.

Trust Company entitled to rely on certified copies of instruments.

Section 12. Except as and when this indenture otherwise expressly provided, the Trust Company shall be entitled to act and rely upon any copy of resolution, certificate, order, request, direction, or other instrument, by any provision of this indenture required or provided to be delivered by the Railway Company to the Trust Company when the same is certified or signed by the Secretary or an Assistant Secretary of the Railway Company under its corporate seal, and shall be fully protected in respect of any and all acts done or action taken or suffered by it, or in its behalf, in reliance thereon; and every such copy of resolution, certificate, order, request, direction or other instrument, thus certified and executed, shall be, at all times and in all places, conclusively taken and held to be the act and deed of, and binding upon, the Railway Company.

Trust Company not bound to see to application of bonds.

Section 13. The Trust Company shall not be bound to see to, nor be responsible for, the use and application of any bonds which shall be delivered by it to the Railway Company, or upon its order, under any of the provisions of this Article Second, or of the proceeds thereof.

Article Third.

The Railway Company covenants with the Trustees as hereinafter in this Article set forth:

PARTICULAR COVENANTS OF RAILWAY COMPANY.

Section 1. The Railway Company will duly and punctually pay the principal and the interest of every bond issued under this indenture, at the dates and the places and in the manner mentioned in such bonds or in the coupons thereto belonging, according to the true intent and meaning thereof, without deduction from either principal or interest for any tax or governmental charge which the Railway Company or the Trustees, or either of them, may be required or permitted to pay, or to retain therefrom, under or by reason of any present or future law of the United States, or of any state, territory, county, municipality or other taxing authority therein, the payment of which tax or charge the Railway Company hereby assumes. The interest on the coupon bonds shall be payable only upon presentation and surrender of the several coupons for such interest as they respectively mature, and, when paid, such coupons shall forthwith be canceled. The interest on the registered bonds without coupons shall be payable only to the registered holders thereof.

In order to prevent any accumulation of coupons and claims for interest after maturity, the Railway Company will not, directly or indirectly, extend, or assent to the extension of, the time for the payment of any coupon or claim for interest on any of the First Terminal and Unifying Mortgage Bonds; and the Railway Company will not, directly or indirectly, be a party to or approve of any such arrangement by purchasing or funding said coupons or claims for interest or in any other manner. No purchase of any coupon or any advance or loan thereon by or on behalf of the Railway Company or by or on behalf of any person or corporation which, by agreement with the Railway Company, shall become obligated to the payment of the same, shall keep such coupons alive or preserve their lien upon the trust estate except after the prior payment in full of the principal of all the First Terminal and Unifying Mortgage Bonds and of all coupons and claims for interest not so purchased or funded.

At all times until the payment of the First Terminal and Unifying Mortgage Bonds, the Railway Company will keep an office or agency in the Borough of Manhattan, in the City of New York, where the First Terminal and Unifying Mortgage Bonds and coupons

Covenant to
pay principal
and interest,
without
deduction for
taxes.

—not to exten
time for
payment of
interest.

—to keep an
office in New
York for
paying bonds
and coupons.

may be presented for payment, and where notices and demands in respect of the First Terminal and Unifying Mortgage Bonds and coupons under this indenture may be served, as to the Railway Company, and will, by written notice, designate such office or agency to the Trust Company, or will designate, by a written notice to the Trust Company, a bank or trust company in said Borough for such purposes. In default of any such office or agency or such designation thereof, presentation and demand may be made and notice served at the office, in said Borough of Manhattan, of the Trust Company or of any successor to it in the trust.

certain after
required
property
subject to
indenture.

Covenant for
urther
suarances.

Section 2. All railways, franchises and other property of every kind which hereafter may be at any time required by the Railway Company, in respect of the construction or acquisition whereof bonds under this indenture shall be authenticated and delivered as hereinbefore provided, and any of the "underlying bonds" specified in Section 6 of Article Second of this indenture which hereafter may be acquired by the Railway Company shall, immediately upon the acquisition thereof by the Railway Company and without any further conveyance or assignment become and be subject to the lien of this indenture as fully and completely as though now owned by the Railway Company and specifically described in the Granting Clause hereof; but at any and all times, the Railway Company will execute and deliver any and all such further assurances or conveyances or assignments thereof to the Trustees as the Trustees, or either of them, may reasonably direct or require, for the purpose of expressly and specifically subjecting the same to the lien of this indenture, and forthwith, on the acquisition of any of the "underlying bonds," will deliver the same to the Trust Company; and also the Railway Company will do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, all and every such further acts, deeds, conveyances, transfers and assurances in the law, for the better assuring, conveying, assigning and confirming unto the Trustees all and singular the hereditaments and premises, estates and property by this indenture conveyed or assigned, or intended so to be, or which the Railway Company may be or hereafter become bound to convey or assign to the Trustees,

as the Trustees, or either of them, shall reasonably require.

Section 3. The Railway Company owns and is lawfully possessed of the lines of railroad, equipment, franchises and property described in the Granting Clause of this indenture; and the Railway Company will warrant and defend the title thereof and every part thereof as well as of any lines of railroad, equipment and franchises or of other lands acquired by the Railway Company, to the Trustees, their successors in the trust and their assigns, for the benefit of the holders for the time being of the First Terminal and Unifying Mortgage Bonds, against the lawful claims and demands of all persons whomsoever.

—<sup>to warrant
and defend
title.</sup>

Subject only as stated in the Granting Clause, the mortgaged premises are free from any lien or charge prior to the lien of this indenture, and, subject only as in the Granting Clause stated or as elsewhere in this indenture expressly permitted, the lines of railroad, equipment, franchises, and property from time to time subject to this indenture and constituting the mortgaged premises shall be kept free from any lien or charge prior to the lien of this indenture.

—<sup>as to priority
of lien.</sup>

The Railway Company will not voluntarily create, or suffer to be created, any debt, lien or charge which would be prior to the lien of this indenture upon the trust estate, or any part thereof, or upon the income thereof; and, within three months after the same shall accrue, it will pay or cause to be discharged, or will make adequate provision to satisfy and discharge, all lawful claims and demands of mechanics, labors and others which, if unpaid, may by law be given precedence to this indenture as a lien or charge upon the trust estate or any part thereof, or the income thereof; provided, that nothing in this Section contained shall require the Railway Company to pay any such debt, lien or charge so long as it shall, in good faith, contest the validity thereof, unless thereby, in the opinion of the Trust Company, the trust estate or some part thereof will be lost, forfeited or materially endangered.

—<sup>not to create
any prior lien
upon trust
estate or
income.</sup>

—<sup>to discharge
all lawful
claims of
mechanics,
labors and
others.</sup>

Section 4. The Railway Company from time to time will pay and discharge or cause to be paid and discharged, all taxes, assessments and governmental charges (the lien whereof would be prior to the lien hereof) lawfully imposed upon the trust estate or

—^{to pay taxes.}

upon any part thereof, or upon the income and profits thereof, and also all taxes, assessments and governmental charges lawfully imposed upon the lien or interest of the Trustees in respect to such premises or income, so that the lien and priority of this indenture shall be fully preserved at the cost of the Railway Company without expense to the Trustees or the bondholders; provided, however, that the Railway Company shall have the right to contest any such tax, assessment or charge, and, pending such contest, may delay or defer the payment thereof, unless thereby, in the opinion of the Trust Company, the trust estate or some part thereof will be lost, forfeited or materially endangered.

—
to furnish
Trust
Company lists
of equipment.

Section 5. The Railway Company shall and will forthwith file with the Trust Company a correct list of all locomotives, cars, rolling stock and other equipment covered by the conditional sale agreements securing the equipment notes specified in Section 4 of Article Second of this indenture, and the Railway Company shall and will also at all times keep on its books a separate list of all locomotives, cars, rolling stock and other equipment purchased or acquired through the use of the bonds secured by this indenture, or their proceeds, and subject to this indenture as a first lien thereon, and will furnish to the Trust Company a complete list of all such locomotives, cars, rolling stock and equipment as the same are so purchased or acquired, and from time to time will furnish to the Trust Company a corrected list thereof, so as to enable the Trust Company at all times to identify the locomotives, cars, rolling stock and other equipment upon which this indenture is a first lien.

—
to maintain
mortgaged
equipment.

The Railway Company shall and will at all times keep and maintain in good order and condition, reasonable wear and tear excepted, all locomotives, cars, rolling stock and other equipment purchased or acquired through the use of bonds secured by this indenture, or the proceeds of said bonds, and upon which this indenture shall be or become a first lien; and whenever any such locomotives, cars, rolling stock or other equipment shall be worn out or be destroyed, the Railway Company shall and will promptly cause the same to be replaced by other locomotives, cars, rolling stock or equipment of at least equal value, so that at all times the value of such locomotives, cars, rolling stock and other equipment, on which this in-

denture shall be a first lien, shall be fully kept up; and at all times the Railway Company will set apart, use and apply for that purpose so much of the net earnings of the property mortgaged and pledged hereunder as may be required for the maintenance and replacement of said equipment.

The Railway Company shall and will cause any and all locomotives, cars, rolling stock and other equipment which may be purchased or acquired by the use of the bonds secured by this indenture, or the proceeds of said bonds, and upon which this indenture shall be a first lien, to be clearly and distinctly marked, so as to be readily identified and to comply with the requirements of any and all laws requiring the marking of rolling stock and equipment, in order to assure and protect the lien of this indenture as a first lien thereon.

—^{to cause}
—^{equipment to}
—^{be marked for}
—^{identification.}

Section 6. The Railway Company shall and will, at all times, keep insured its rolling stock, tools and machinery, its buildings, and all other structures erected, or to be erected, on the mortgaged premises and all other property provided for use in connection with the railways and premises at any time subject to the lien of this indenture, and of the character usually insured by railway companies, and in the same manner, and to the same extent. The proceeds of any such insurance shall be set apart and held by the Railway Company and applied by it to the purchase of other property, real or personal, including rolling stock and equipment, which shall become subject to this indenture as a lien thereon, or in betterments of or in additions to the mortgaged premises. In the case of all property of any kind or nature whatsoever, including equipment, upon which this indenture is a first lien, the policies of insurance shall provide that in case of loss the insurance shall be paid to the Trust Company, and the policies shall be delivered to and be held by the Trust Company. Upon the payment to the Trust Company of any insurance money on account of losses covered by such insurance, such money until the replacement or repair of the property covered by such insurance or the purchase by the Railway Company of other property, as aforesaid; and upon the receipt by the Trust Company of a certificate, signed or purporting to be signed by the President, or a Vice-President and by the Auditor or Treasurer or Assistant Treasurer of the Railway Company, un-

der its corporate seal, setting forth that such insured property has been replaced by new or additional property, or repaired, or that other property has been purchased, as aforesaid, and the cost of such replacement, repair or purchase, stated with reasonable detail, and that such cost was reasonable and proper in amount, such insurance money, to the extent of such cost, shall be paid by the Trust Company to the Railway Company. Such certificate may be accepted by the Trust Company as conclusive evidence of the facts therein referred to and as full authority and protection to the Trust Company for its action on the faith thereof.

New property
subject to
indenture.

Any new property acquired by the Railway Company ipso facto shall become and be subject to this indenture as fully as though specifically mortgaged or assigned hereby, but, if requested by the Trust Company, the Railway Company will convey and assign the same to the Trust Company by appropriate deeds or other instruments upon the trusts and for the purposes of this indenture, and will cause the same to be recorded or filed in such manner as appropriately to secure and continue the lien of this indenture thereon.

Covenant to
maintain
franchises and
properties.

Section 7. The Railway Company shall and will diligently preserve all the rights and franchises to it granted and upon it conferred, and shall and will, at all times, maintain, preserve and keep the same, and every part thereof, and will, at all times, maintain, preserve and keep the rolling stock, fixtures and appurtenances, and every part and parcel thereof, in good repair, working order and condition, and will at all times keep the railways, premises and estate, from time to time subject to this indenture, supplied with all necessary motive power, rolling stock and equipment, and shall and will, from time to time, thereto make all needful and proper repairs, renewals and replacements.

At all times the Railway Company will keep and maintain in good order and condition, reasonable wear and tear excepted, all locomotives, tenders, cars and other equipment upon which this indenture shall be or become a lien, and whenever any such locomotives, tenders, cars or other equipment shall be worn out or be destroyed, the Railway Company promptly will cause the same to be replaced by other locomotives, tenders, cars or other equipment of at least

equal value, so that at all times the value of such locomotives, tenders, cars and other equipment upon which this indenture shall be a lien shall be fully kept up.

Section 8. The Railway Company faithfully and punctually will pay at maturity the principal of, and, as the same matures, the interest on, any bond or obligation or indebtedness of the Railway Company secured by lien or charge, however created, prior to that if this indenture on the mortgaged premises or any part thereof, and the Railway Company faithfully will observe and perform the covenants of any and every mortgage or deed or other instrument of trust or otherwise, securing any such bond or obligation which may constitute or create a lien or charge on any part of the mortgaged premises in priority to this indenture.

not to
default on
underlying
liens.

Section 9. Except as in this indenture expressly authorized, the Railway Company will not, by its affirmative vote or consent or by abstaining from voting, sanction or permit any increase of the bonded indebtedness or capital stock of any company all of whose capital stock (except qualifying shares) now are or hereafter shall be subject to this indenture, or the guaranty of any bonds of any such company or the creation of any mortgage or other lien upon the railroad or property of any such company, unless effective provision be made that such bonds and such mortgage or other lien and all such additional stock shall forthwith, upon the issue or creation thereof, be subjected to this indenture and be transferred to the trustee of the mortgage of the railway company under which the stock or bonds of any such company, theretofore issued, are held.

—except, as
expressly
authorized.
not to increase
bonded
indebtedness
or capital stock
of companies
all of whose
stock is subject
to this
indenture.

The Railway Company further covenants and agrees that it will not, by its affirmative vote or consent, or by abstaining from voting, sanction or permit the extension of the time of payment of the principal of any of the "underlying bonds" mentioned in Section 6 of Article Second of this indenture, except for a period not in excess of two years from the respective dates of maturity of said "underlying bonds."

—not to extend
time of
payment of
underlying
bonds beyond
two years after
maturity
thereof.

—not to dispose of railroad or property of companies all of whose capital stock is subject to this indenture.

—not to issue, sell or dispose of bonds, nor to apply proceeds, except as provided herein.

REMEDIES OF
TRUSTEES AND
BONDHOLDERS.

Coupons
separately
transferred
deferred in
payment.

Events of
default:

(a) default in
payment of
principal and
interest.

Except as in this indenture expressly authorized, the Railway Company will not, by its affirmative vote or consent or by abstaining from voting, sanction or permit any company, all of whose capital stock (except qualifying shares) now is or hereafter shall be subject to this indenture, to sell or otherwise dispose of, or lease (unless such lease be upon the express condition that it shall terminate at the election of the Trust Company in the case of any event of default, as hereinafter in this indenture set forth any railroad belonging to such company or any property required for the operation thereof, except to the Railway Company or to some other company, all of whose capital stock (except qualifying shares) shall then be owned by the Railway Company and be subject to the lien of this indenture.

Section 10. The Railway Company will not issue, negotiate, sell or dispose of any First Terminal and Unifying Mortgage Bonds in any manner other than in accordance with the provisions of this indenture and the agreements in that behalf herein contained and with the requirements of law; and in issuing, selling, negotiating or otherwise disposing of such bonds, from time to time, it will well and truly apply, or cause to be applied, the same, or the proceeds thereof, to and for the purposes herein prescribed, and to or for no other or different purpose.

Article Fourth.

Section 1. Neither any coupon belonging to any First Terminal and Unifying Mortgage Bond, nor any claim for interest on any registered bond, which in any way, at or after maturity, shall have been transferred or pledged separate or apart from the bond to which it relates, shall, unless accompanied by such bond, be entitled, in case of a default hereunder, to any benefit of or from this indenture, except after the prior payment in full of the principal of all the bonds issued hereunder, and of all coupons and interest obligations not so transferred or pledged.

Section 2. If one or more of the following events, hereinafter called the events of default, shall happen, that is to say:

(a) default shall be made in the payment of any installment of interest on any of the First Terminal and Unifying Mortgage Bonds when and as the same shall become payable, as

therein and herein expressed; and such default shall continue for the space of three months, or default shall be made in the payment of the principal of any of said bonds when the same shall become due and payable either by the terms thereof or by declaration or otherwise as herein provided;

(b) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Railway Company, its successors or assigns, in the First Terminal and Unifying Mortgage Bonds, or in this indenture contained, and such default shall continue for the space of three months after written notice from the Trust Company, specifying such default and requiring the same to be remedied;

(b) Default in observance of other covenants.

(c) an order shall be made for the appointment of a receiver of the Railway Company or of the trust estate or of any part thereof in any action for the foreclosure or enforcement otherwise of this indenture, or in any action for the foreclosure or enforcement otherwise of any lien or charge on the trust estate or on any part thereof in priority to the lien of this indenture; or, an order having been made for the appointment of a receiver of the Railway Company or of the trust estate, or of some part thereof, in any action or proceeding other than as aforesaid, default shall be made in the payment of any installment of interest on any of the First Terminal and Unifying Mortgage Bonds when and as the same shall become payable, as therein and herein expressed;

(c) appointment of receiver.

(d) default shall be made in the punctual payment of the interest, as such interest matures, on any bond or obligation secured by any lien prior to that of this indenture on the mortgaged premises or any part thereof, or the Railway Company shall fail, on the maturity of said bonds or obligations and on presentation thereof in accordance with the terms thereof, either to pay said bonds or obligations or to cause said bonds and obligations to be taken up and delivered to the Trust Company to be held under this indenture; or default shall be made

(d) default in payment of underlying obligations.

in the performance of any covenant contained in any mortgage or deed or other instrument of trust or otherwise, securing any such bond or obligation constituting a lien on any part of the mortgaged premises in priority to this indenture and by reason of such default any right of entry or of action for the enforcement of the security afforded thereby shall accrue;

Trust
Company's
right of entry
on default.

then and in each and every such case the Trust Company, one of the Trustees hereunder, personally, or by its agents or attorneys, may enter into and upon all or any part of the railways, rolling stock, property and premises, lands, rights, interests and franchises hereby conveyed or intended so to be, constituting the mortgaged premises and the trust estate, and each and every part thereof, and may exclude the Railway Company, its agents and servants, wholly therefrom; and, having and holding the same, may use, operate, manage and control said railways and other premises, regulate the tolls for the transportation of passengers and freight thereon, and conduct the business thereof, either personally or by its superintendents, managers, receivers, agents and servants or attorneys; and upon every such entry the Trust Company, at the expense of the trust estate, from time to time, either by purchase, repairs or construction, may maintain and restore and may insure or keep insured the rolling stock, tools and machinery and other property, buildings, bridges and structures erected or provided for use in connection with said railways and other premises, whereof it shall become possessed, as aforesaid, in the same manner and to the same extent as is usual with railway companies; and likewise, from time to time, at the expense of the trust estate, may make all necessary or proper repairs, renewals and replacements, and useful alterations, additions, betterments and improvements thereto and thereon, as to it may seem judicious; and in such case the Trust Company shall have the right to manage the mortgaged railways and property and to carry on the business and exercise all rights and powers of the Railway Company, either in the name of the Railway Company or otherwise, as the Trust Company shall deem best. And the Trust Company shall be entitled to collect and receive all tolls, earnings, rents, issues and profits of the same and every part thereof. And after deducting the expenses of operating said railways and other premises, and of

conducting the business thereof and of all repairs, maintenance, renewals, replacements, alterations, additions, betterments and improvements, and all payments which may be made for taxes, assessments, insurance, and prior or other proper charges upon the trust estate, or any part thereof, as well as just and reasonable compensation for its own services and for all agents, clerks, servants and other employes by it properly engaged and employed, the Trust Company shall apply the moneys arising as aforesaid, as follows:

(a) In cases the principal of the First Terminal and Unifying Mortgage Bonds shall not have become due, to the payment of the interest in default in the order of the maturity of the installments of such interest, with interest thereon at the rate of five (5) per centum per annum, such payments to be made ratably to the persons entitled thereto, without discrimination or preference;

—if principal
not due.

(b) In case the principal of the First Terminal and Unifying Mortgage Bonds shall have become due, by declaration or otherwise, first to the payment of the accrued interest, with interest on the overdue installments thereof at the rate of five (5) per centum per annum, in the order of the maturity of the installments, and next to the payment of the principal of all the First Terminal and Unifying Mortgage Bonds; in every instance such payments to be made ratably to the persons entitled to such payments, without any discrimination or preference.

—if principal
due.

These provisions, however, are not intended in any wise to modify the provisions of Section 1 of this Article Four of Section 1 of Article Third, but are subject thereto.

Section 3. If one or more of the events of default shall have happened, then and in every such case, unless the principal of the First Terminal and Unifying Mortgage Bonds shall already have become due, the Trust Company, by notice in writing delivered to the Railway Company, may, and, upon the written request of the holders of twenty-five per cent. in amount of the First Terminal and Unifying Mortgage Bonds then outstanding, shall declare the principal of all the First

Trust
Company
may declare
principal due.

Waiver of
declaration
of maturity by
bondholders.

Terminal and Unifying Mortgage Bonds then outstanding to be due and payable immediately, and upon any such declaration the same shall become and be immediately due and payable, anything in this indenture or in said bonds contained to the contrary notwithstanding. This provision, however, is subject to the condition that if, at any time after the principal of said bonds shall have been so declared due and payable, and before any sale of the trust estate shall have been made, all arrears of interest upon all the First Terminal and Unifying Mortgage Bonds then outstanding, with interest on overdue installments of interest at the rate of five (5) per centum per annum, together with the reasonable charges and expenses of the Trust Company, its agents and attorneys, shall either be paid by the Railway Company or be collected out of the trust estate, and all other defaults under the First Terminal and Unifying Mortgage Bonds or under this indenture shall be made good to the satisfaction of the Trust Company, then and in such case the holders of a majority in amount of the First Terminal and Unifying Mortgage Bonds then outstanding, by written notice to the Railway Company and to the Trust Company, may waive such default and its consequences; but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon. In case the Trust Company shall have proceeded to enforce any right under this indenture by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned because of such waiver, or for any other reason, or shall have been determined adversely to the Trust Company, then and in every such case the Railway Company and the Trust Company shall be restored to their former position and rights hereunder in respect of the trust estate, and all rights, remedies and powers of the Trust Company shall continue as though no such proceeding had been taken.

Trust
Company's
rights on
default:

Section 4. If one or more of the events of default shall happen, the Trust Company, with or without entry, personally or by attorney, in its discretion, either

(a) to sell
mortgaged
premises.

(a) may sell subject to the then prior existing liens thereon, to the highest and best bidder, all and singular the trust estate under this indenture, including securities, rights, fran-

chises, interests and appurtenances, and other real and personal property of every kind, and all right, title and interest, claim and demand therein, and right of redemption thereof; such sale or sales shall be made at public auction at such place in the City of Pine Bluff, in the State of Arkansas, or at such other place or places upon the mortgaged railroads, and at such time or times, and upon such terms as the Trust Company in its discretion may fix and briefly specify in the notice of sale to be given as herein provided, or as may be required by law; or

(b) may proceed to protect and to enforce its rights and the rights of bondholders under this indenture, by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy, as the Trust Company, being advised by counsel learned in the law, shall deem most effectual to protect and enforce any of its rights or duties hereunder or the rights of the holders of the First Terminal and Unifying Mortgage Bonds.

Section 5. Upon the written request of the holders of fifteen per cent. in amount of the First Terminal and Unifying Mortgage Bonds then outstanding, in case one or more of the events of default shall happen, it shall be the duty of the Trust Company, upon being indemnified as hereinafter provided, to take all steps needful for the protection and enforcement of its rights and the rights of the holders of the First Terminal and Unifying Mortgage Bonds, and to exercise the right of entry or of sale herein conferred, or both, or to take appropriate judicial proceedings by action, suit or otherwise, as the Trust Company, being advised by counsel learned in the law, shall deem most expedient in the interest of the holders of the First Terminal and Unifying Mortgage Bonds.

Section 6. In the event of any sale, whether made under the power of sale herein granted or conferred, or under or by virtue of judicial proceedings, the whole of the property subject to this indenture shall be sold in one parcel and as an entirety, including all the

(b) to institute
judicial
proceedings.

Trust
Company
to act on
written
request of
bondholders.

Sale of
mortgaged
premises
to be as an
entirety—

rights, title, estates, railways, equipment, franchises, leases, leasehold interests, contracts, securities and other real and personal property of every name and nature, unless such sale as an entirety is impracticable by reason of some statute or other cause, or unless the holders of a majority in amount of the First Terminal and Unifying Mortgage Bonds then outstanding shall in writing request the Trust Company to cause said premises to be sold in parcels, in which case, unless prevented by statute or other cause, the sale shall be made in such parcels, and in such order as may be specified in such request. The Railway Company, for itself and all persons and corporations hereafter claiming through or under it or who may at any time hereafter become holders of liens junior to the lien of this indenture, hereby expressly waives and releases all right to have the properties and estates comprised in the security intended to be created by this indenture marshaled upon any foreclosure or other enforcement hereof, and the Trust Company, or any court in which the foreclosure of this indenture or administration of the trusts hereby created is sought, shall have the right as aforesaid to sell the entire property of every description comprised in or subject to the trusts created by this indenture as a whole in a single lot.

Notice of sale. Section 7. Notice of any sale pursuant to any provision of this indenture shall state the time and place when and where the same is to be made, and shall contain a brief general description of the property to be sold, and shall be sufficiently given if published once in each week for four successive weeks prior to such sale in a newspaper published in the Borough of Manhattan, in the City of New York, N. Y., and a newspaper published in St. Louis, Mo., unless another and different publication thereof shall be required by law, in which event, the notice or publication, or both, thus required shall be given and made.

Adjournments. Section 8. The Trust Company may adjourn from time to time any sale by it to be made under the provisions in this indenture, by announcement at the time and place appointed for such sale, or for such adjourned sale or sales; and without further notice or publication, it may make such sale at the time and place to which the same shall be so adjourned.

—unless impracticable or majority of bondholders request otherwise.

Section 9. Upon the completion of any sale or sales under this indenture, the Trust Company shall execute and deliver to the accepted purchaser or purchasers a good and sufficient deed or good and sufficient deeds, and other instruments conveying, assigning and transferring the properties and franchises sold. The Trust Company and its successors hereby are appointed the true and lawful attorneys irrevocable of the Railway Company in its name and stead to make all necessary conveyances and assignments of property and all necessary transfers of securities thus sold; and for that purpose they may execute all necessary deeds and instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power; the Railway Company hereby ratifying and confirming all that its said attorneys or such substitute or substitutes shall lawfully do by virtue hereof. Nevertheless the Railway Company shall, if so requested by the Trust Company, ratify and confirm any sale or sales by executing and delivering to the Trust Company or to such purchaser or purchasers all such instruments as may be necessary or in the judgment of the Trust Company proper for the purpose or as may be designated in such request.

Any such sale or sales made under or by virtue of this indenture, whether under the power of sale herein granted and conferred, or under or by virtue of judicial proceedings, shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of the Railway Company, of, in and to the premises and property so sold, and shall be a perpetual bar both at law and in equity, against the Railway Company, its successors and assigns, and against any and all persons claiming or to claim the premises and property sold, or any part thereof from through or under the Railway Company, its successors or assigns.

The personal property and chattels conveyed or intended to be conveyed by or pursuant to this indenture, other than securities and claims, shall be real estate for all the purposes of this indenture, and shall be held and taken to be fixtures and appurtenances of the said railways, and part thereof, and are to be used and sold therewith and not separate therefrom, except as herein otherwise provided.

Vesting title
in purchaser

Sale to divest
all interest of
Railway
Company.

Personal
property
mortgaged,
except securi-
ties, to be
deemed
fixtures.

Trust Company's receipt
a sufficient
discharge to
purchaser.

Section 10. The receipt of the Trust Company or of the court officer making any such sale for the purchase money paid at any such sale shall be a sufficient discharge therefor to any purchaser of the property or any part thereof, sold as aforesaid; and no such purchaser or his representatives, grantees or assigns, after paying such purchase money and receiving such receipt, shall be bound to see to the application of such purchase money upon or for any trust or purpose of this indenture, or in any manner whatsoever be answerable for any loss, misapplication or non-application of any such purchase money or any part thereof, or be bound to inquire as to the authorization, necessity, expediency or regularity of any such sale.

Principal to
become due
on sale.

Section 11. In case of a sale under any of the foregoing provisions of this Article, whether made under the power of sale herein granted or pursuant to judicial proceedings, or in case of a sale of any of the property embraced in this indenture in the enforcement of any lien or charge thereon prior to the lien of this indenture, whether such lien or charge be by mortgage or deed or other instrument of trust or otherwise, the principal sums of the First Terminal and Unifying Mortgage Bonds, if not previously due, shall immediately thereupon become due and payable, anything in said bonds or in this indenture to the contrary notwithstanding.

Application of
proceeds of
sale:

Section 12. The purchase money, proceeds or avails of any such sale, whether under the power of sale herein granted or pursuant to judicial proceedings, together with any other sums which then may be held by the Trust Company under any of the provisions of this indenture as part of the trust estate or the proceeds thereof, or of some part thereof, shall be applied as follows:

—FIRST, to
payment of
expenses, etc.

First. To the payment of the costs and expenses of such sale including a reasonable compensation to the Trust Company, its agents, attorneys and counsel, and of all expenses, liabilities and advances made or incurred by the Trust Company, and to the payment of all taxes, assessments or liens superior to the lien of this indenture, except the superior liens and any taxes, assessments or other charges, subject to which the property shall have been sold;

Second. To the payment of the whole amount then owing or unpaid upon the First Terminal and Unifying Mortgage Bonds for principal and interest, with interest on the overdue installments of interest at the rate of five (5) per centum per annum; and in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid upon said bonds, then to the payment of the principal and interest of said bonds, without preference or priority of principal over interest, or of interest over principal, or of any installment of interest over any other installment of interest, ratably to the aggregate of such principal and the accrued and unpaid interest; subject, however, to the provisions of Section 1 of this Article Fourth and of Section 1 of Article Third.

—SECOND, to payment of principal and interest.

Third. To the payment of the surplus, if any, to the Railway Company, its successors or assigns, or to whomsoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

—THIRD, surplus to Railway Company.

Section 13. Upon any such sale by the Trust Company or pursuant to judicial proceedings, any purchaser, for or in settlement or payment of the purchase price of the property purchased, shall be entitled to use and apply any First Terminal and Unifying Mortgage Bonds, and any matured and unpaid coupons by presenting such bonds and coupons in order that there may be credited thereon the sums applicable to the payment thereof out of the net proceeds of such sale to the owner of such bonds and coupons as his ratable share of such net proceeds, after the deduction of costs, expenses, compensations and other charges; and thereupon such purchaser shall be credited on account of such purchase price payable by him, with the portion of such net proceeds that shall have been credited upon, the bonds and coupons so presented; and at any such sale; any bondholders may bid for and purchase such property, and may make payment therefor as aforesaid, and upon compliance with the terms of sale, may hold, retain and dispose of such property without further accountability.

Purchaser may apply bonds and matured coupons in payment of purchase price.

Bondholders may bid.

Section 14. The Railway Company covenants that

On default in payment of interest or principal, Railway Company to pay whole amount due.

(1) in case default shall be made in the payment of any interest on any First Terminal and Unifying Mortgage Bond or Bonds at any time outstanding, and such default shall have continued for a period of three months, or

(2) in case of default shall be made in the payment of the principal of any such bond or bonds when the same shall become payable, whether upon the maturity of said bonds or upon declaration as authorized by this indenture, or upon a sale as set forth in Section

11 of this Article Fourth or otherwise, then upon demand of the Trust Company, the Railway Company will pay to the Trustee, for the benefit of the holders of the First Terminal and Unifying Mortgage Bonds and coupons then outstanding, the whole amount which then shall have become due and payable on all such bonds and coupons then outstanding, for interest or principal, or both, as the case may be, with interest upon the overdue principal and installments of interest at the rate of five (5) per centum per annum; and in case the Railway Company shall fail to pay the same forthwith upon such demand, the Trust Company, in its own name and as trustee of an express trust, shall be entitled to recover judgment for the whole amount so due and unpaid.

Trust Company entitled to recover judgment through other proceedings.

Trust Company entitled to collect deficiency.

The Trust Company shall be entitled to recover judgment as aforesaid, either before or after or during the pendency of any proceedings for the enforcement of the lien of this indenture; and the right of the Trust Company to recover such judgment shall not be affected by any entry or sale hereunder, or by the exercise of any other right, power, or remedy for the enforcement of the provisions of this indenture or the foreclosure of the lien thereof; and in case of a sale of the property subject to this indenture, and of the application of the proceeds of sale to the payment of the debt hereby secured, the Trust Company, in its own name and as trustee of an express trust, shall be entitled to enforce payment of, and to receive all amounts then remaining due and unpaid upon, any and all of the First Terminal and Unifying Mortgage Bonds then outstanding, for the benefit of the holders thereof, and shall be entitled to recover judg-

ment for any portion of the debt remaining unpaid, with interest. No recovery of any such judgment by the Trust Company, and no levy of any execution upon any such judgment upon property subject to this indenture, or upon any other property, shall in any manner or to any extent affect the lien of this indenture upon the property, or any part of the property, subject to this indenture, or any rights, powers or remedies of the Trust Company hereunder, or any lien, rights, powers or remedies of the holders of the First Terminal and Unifying Mortgage Bonds, but such lien, rights, powers and remedies of the Trust Company and of the bondholders shall continue unimpaired as before. *

Any moneys thus collected by the Trust Company under this Section shall be applied by the Trust Company, first, to the payment of the expenses, disbursements and compensation of the Trust Company, its agents and attorneys, and, second, toward payment of the amounts then due and unpaid upon such bonds and coupons in respect of which such moneys shall have been collected, ratably and without any preference or priority of any kind (except as provided in Section 1 of this Article Fourth and in Section 1 of Article Third), according to the amounts due and payable upon such bonds and coupons, respectively, at the date fixed by the Trust Company for the distribution of such moneys, upon presentation of the several bonds and coupons and stamping such payment thereon, if partly paid, and upon surrender thereof, if fully paid.

Section 15. The Railway Company will not, at any time, insist upon or plead, or in any manner whatever claim, or take the benefit or advantage of, any stay or extension law or laws, now or at any time hereafter in force; nor will it claim, take or insist upon any benefit or advantage from any law now or hereafter in force providing for the valuation or appraisement of the property, or any part of the property, subject to this indenture, prior to any sale or sales thereof to be made pursuant to any provision herein contained, or to the decree, judgment or order of any court of competent jurisdiction; nor, after any such sale or sales, will it claim or exercise any right under any statute enacted by the United States of America, or by any state or territory or otherwise, to redeem

Recovery of
judgment not
to affect lien.

Application
of moneys
recovered.

Waiver of stay
or extension,
valuation, or
appraisement
laws—

—and right of
redemption.

the property so sold or any part thereof; and it hereby expressly waives all benefit and advantage of any such law or laws, and it covenants that it will not hinder, delay or impede the execution of any power herein granted and delegated to the Trust Company, but that it will suffer and permit the execution of every such power as though no such law or laws had been made or enacted.

Rights of Trust
Company on
Instituting
judicial
proceedings.

Section 16. Upon filing a bill in equity, or upon commencement of any other judicial proceedings, to enforce any right of the Trust Company or of the bondholders under this indenture, the Trust Company shall be entitled to exercise the right of entry, and also any and all other rights and powers herein conferred and provided to be exercised by the Trust Company upon the happening of an event of default as hereinbefore provided; and, as matter of right, the Trust Company shall be entitled to the appointment of a receiver of the premises and property subject to this indenture, and of the earnings, income, revenue, rents, issues and profits thereof, with such powers as the court making such appointment shall confer; but notwithstanding the appointment of any receiver, the Trust Company shall be entitled, as pledgee, to continue to retain possession and control of any securities, bonds, cash and other property pledged or to be pledged with the Trust Company hereunder.

Voluntary
surrender of
possession
to Trust
Company.

Section 17. At any time hereafter before full payment of the First Terminal and Unifying Mortgage Bonds, and whenever it shall deem expedient for the better protection or security of such bonds (although then none of the events of default shall have happened), the Railway Company, with the consent of the Trust Company, may surrender and may deliver to the Trust Company full possession of the whole or of any part of the property, premises and interests hereby conveyed or assigned, or intended so to be, and may authorize the Trust Company to collect the dividends and interest on all securities, bonds, and other obligations subject to this indenture, for any period, fixed or indefinite. In such event the Trust Company shall enter into and upon the premises and property so surrendered and delivered, and shall take and receive possession thereof for such period, fixed or indefinite, as aforesaid, without prejudice, however, to its right at any time subsequently, when entitled thereto by any provision of this indenture, to

insist upon maintaining and to maintain, such possession though beyond the expiration of any such prescribed period, and the Trust Company, from the time of its entry upon such premises and property, shall work, maintain, use, manage, control and employ the same in accordance with the provisions of this indenture, and shall receive and apply the income and revenues thereof as provided in Section 2 of this Article Fourth. Upon application of the Trust Company, and with the consent of the Railway Company, if none of the events of default has happened, and without such consent if then one of the events of default has happened, a receiver may be appointed to take possession of, and to operate, maintain and manage the whole or any part of the property subject to this indenture, and the Railway Company shall transfer and deliver to such receiver all such property, wheresoever the same may be situated; and in every case, when a receiver of the whole or of any part of said property shall be appointed under this Section 17, or otherwise, the net income and profits of such property shall be paid over to, and shall be received by, the Trust Company, for the benefit of the holders of the First Terminal and Unifying Mortgage Bonds; provided, however, that notwithstanding the appointment of any such receiver, the Trust Company, as pledgee, shall be entitled to retain possession and control of any securities, bonds, cash and other property pledged or to be pledged with the Trust Company hereunder.

Section 18. No holder of any First Terminal and Unifying Mortgage Bond or coupon shall have any right to institute any suit, action or proceeding in equity or at law for the foreclosure of this indenture, or for the execution of any trust hereunder, or for the appointment of a receiver, or for any other remedy hereunder, unless such holder previously shall have given to the Trust Company written notice of such default and of the continuance thereof, as hereinbefore provided, nor unless also the holders of fifteen per cent. in amount of the First Terminal and Unifying Mortgage Bonds then outstanding shall have made written request upon the Trust Company, and shall have afforded to it a reasonable opportunity either to proceed to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its own name; nor, unless, also, they shall have

Appointment
of receiver.

Bondholders
not to sue
until
application
made to Trust
Company.

offered to the Trust Company security and indemnity satisfactory to it against the costs, expenses and liabilities to be incurred therein or thereby; and such notification, request and offer of indemnity are hereby declared in every such case, at the option of the Trust Company, to be conditions precedent to the execution of the powers and trusts of this indenture and to any action or cause of action for foreclosure or for the appointment of a receiver or for any other remedy hereunder; it being understood and intended that no one or more holders of First Terminal and Unifying Mortgage Bonds and coupons shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the lien of this indenture, or to enforce any right hereunder, except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all holders of such outstanding bonds and coupons.

Remedies
cumulative.

Section 19. Except as herein expressly provided to the contrary, no remedy herein conferred upon or reserved to the Trust Company or to the holders of First Terminal and Unifying Mortgage Bond is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Delay not a
waiver of
default.

Section 20. No delay or omission of the Trust Company or of any holder of First Terminal and Unifying Mortgage Bonds to exercise any right or power accruing upon any default, shall impair any such right or power or shall be construed to be a waiver of any such default, or an acquiescence therein; and every power and remedy given by this Article to the Trust Company and to the bondholders respectively, may be exercised from time to time, and as often as may be deemed expedient, by the Trust Company or by the bondholders, respectively.

Railway
Company and
Trust
Company
restored to
former position
on termination
of proceedings
to enforce
rights.

Section 21. In case the Trust Company shall have proceeded to enforce any right under this indenture by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned because of waiver or for any other reason, or shall have been determined adversely to the Trust Company, then, and in every such case, the Railway Company and the Trust Company shall severally and respec-

tively be restored to their former position and rights hereunder in respect of the mortgaged premises, and all rights, remedies and powers of the Trust Company shall continue as though no such proceedings had been taken.

ARTICLE FIFTH.

Section 1. The Guaranty Trust Company of New York, one of the Trustees hereunder, or any trust company which may be appointed its successor in the trust hereunder, shall receive and retain, as one of the trustees hereunder, the sole custody and possession of all bonds and other securities and the certificates for all stocks, and also all moneys which shall be delivered or pledged or deposited pursuant to any provision of this indenture.

Section 2. The Trust Company is authorized to cause any and all coupon bonds delivered to it as security hereunder, or which at any time hereafter may be delivered to its as security hereunder, to be stamped "Not negotiable. Held by Guaranty Trust Company of New York, as Trustee, under the First Terminal and Unifying Mortgage of St. Louis Southwestern Railway Company, dated January 1, 1912," and the Trust Company shall transfer or cause to be transferred into its name, as one of the Trustees hereunder, or into the name of one or more of its nominees, all certificates for shares of stock delivered to it under any provision of this indenture.

Section 3. It is expressly agreed that, while and so long as there shall be no default in the payment of the principal or interest on any of the bonds secured hereby (unless the Railway Company shall have voluntarily surrendered possession of the mortgaged premises, as herein authorized), the Trust Company shall detach and deliver to the Railway Company all coupons as the same mature on bonds deposited and pledged under this indenture, and will execute and deliver to the Railway Company, upon the written order of its President, or a Vice-President, assignments of or orders for any dividends which may be declared or be payable upon any deposited or pledged stocks registered in the name of the Trust Company, and, similarly, will also make and deliver to the Railway Company such orders or assignments as may be

PROVISIONS AS
TO SECURITIES
PLEDGED.

Trust
Company to
have custody
of securities
and moneys
hereunder.

Bonds to be
stamped.

Stock to be
transferred
into name of
Trust
Company.

Interest on
bonds and
dividends on
stock deposited
hereunder to
be paid over to
Railway
Company.

necessary in order to enable the Railway Company to receive and collect any payments made for or on account of the interest on any other obligations deposited or pledged with the Trust Company hereunder as part of the security hereof, and, so long as the Railway Company shall not be in default hereunder, as aforesaid, and shall not have surrendered possession, as aforesaid, the Railway Company shall have the right to vote upon all shares of stock pledged hereunder, for all purposes not inconsistent with the provisions and purposes of this indenture, and with the same force and effect as if such pledge had not been made, but subject to the restrictions and agreements contained in this indenture; and the Trust Company shall, from time to time, upon the demand of the Railway Company, evidenced by a certified copy of a resolution of its board of directors or executive committee, make and deliver to the Railway Company proxies enabling the Railway Company, or such person or persons as it may designate, to vote any of said stocks registered in the name of the Trust Company at any meeting or meetings of the company or companies which shall have issued the same. Every such proxy shall contain the express provision that the same shall not be construed to authorize the holder thereof to vote to sell, or otherwise dispose of, or lease (unless such lease be upon the express condition that it shall terminate at the election of the Trust Company, in case of the happening of any event of default), any railroad or property belonging to such company, or any property required for the operation thereof, except to the Railway Company or to some other company all of whose capital stock (except qualifying shares) shall then be owned by the Railway Company and be held by the Trust Company subject to the lien of this indenture or shall be held under some one of the "underlying mortgages."

Disposition of certain sums paid Trust Company in respect of pledged bonds or stock.

Section 4. In case, while and so long as there shall be no default hereunder, any sums shall be paid on account of the principal of any bonds at any time held by the Trust Company subject to the lien of this indenture, or in case any sums shall be paid on account of the interest of any such bonds out of the proceeds of the sale of the property covered by any mortgage or other indenture securing such bonds, or in case, upon the dissolution or liquidation of any company, any sums be paid upon any shares of stock of such com-

pany pledged hereunder, then in every such case any such sums shall be collected and received by the Trust Company and held by it and paid over from time to time for any one or more of the purposes set forth and upon the terms and conditions prescribed in Sections 8 or 9 of Article Second hereof.

Section 5. In the event that the Railway Company shall at any time acquire title to all of the property of any company or companies, all of whose mortgage bonds are owned by it and are pledged and deposited with the Trust Company, the Trust Company shall, upon the written request of the President or a Vice-President of the Railway Company, and upon conveyance and assignment to the Trustees of this indenture of all the property so acquired by the Railway Company, cause such bonds to be canceled and delivered to the trustee of the mortgage or lien securing the same, for the purpose of obtaining the discharge and satisfaction of such mortgage or lien, and shall cancel all stock of said company which may be held by it and deliver the same to the Railway Company. A certificate, signed or purporting to be signed by the President or a Vice-President of the Railway Company under its corporate seal, may be received by the Trust Company as conclusive evidence of any of the facts mentioned in this section, and shall be full warrant and protection to the Trust Company for its action on the faith thereof.

Disposition of
pledged stock
and bonds
upon
acquisition of
property of
issuing
company.

Section 6. The Trust Company shall from time to time, upon the request of the Railway Company, evidenced by a certified copy of a resolution of its Board of Directors or Executive Committee, or may, in its discretion, without such request, join in any plan or agreement for the reorganization, adjustment, refunding, exchange or protection of any bonds or stocks deposited and pledged with it under this indenture, and shall upon like request of the Railway Company deposit said bonds or stocks, or such of them as may be specified in said request, with any committee, depository, bank, bankers, or otherwise, and may accept new securities issued in lieu of or in exchange for any such bonds or stocks, or certificates of deposit representing the same, which new securities shall be held subject to the lien of this indenture and all of the provisions thereof; and the Trust Company shall also, upon like request, or may, in its discretion, without

Trust
Company may
join in any
plan for
reorganization
or exchange of
deposited
securities.

Extended obligations may be secured by lien on at least same property as obligations surrendered.

Certificate of counsel.

New bonds to be held in same manner as those exchanged.

Trust Company may maintain corporate existence of companies whose stock is pledged hereunder.

In case of default on obligations pledged hereunder, Trust Company may foreclose.

such request, consent to the extension and renewal of any bonds or obligations pledged with it hereunder, received in exchange for bonds or obligations, pledged with it hereunder, and to the extension of the mortgages, liens or trusts securing the same, and in any such cases the Trust Company shall surrender bonds or obligations held by it under the provisions of this indenture, and in lieu thereof receive other extended or renewed bonds or obligations or interest certificates or receipts representing the same; provided, however, that such other or extended or renewed bonds or obligations shall be secured by a lien or charge upon at least the same property as the bonds or obligations surrendered. The Trust Company shall receive the certificate of counsel of the Railway Company as conclusive evidence that such exchange, extension or renewal is in compliance with the provisions of this section. Any such request or certificate as is provided for by this Section 6 shall be full warrant for protection to the Trust Company for its action on behalf thereof. All bonds and obligations received in exchange for or in extension or renewal of bonds or obligations now or hereafter held by the Trust Company hereunder shall be held by the Trust Company subject to the lien of this indenture, in the same manner and to the same extent as the bonds and obligations in exchange for which or in extension or in renewal of which they shall have been received.

Section 7. The Trust Company, upon the request of the Railway Company, or, in its discretion, without such request, may do whatever may be necessary for the purpose of maintaining or preserving the corporate existence of any and all companies, a greater portion of whose stock shall, at any time, be pledged hereunder, and for such purposes, from time to time, may sell, assign, transfer and deliver so many shares of stock of such companies as may be necessary to qualify persons to act as directors of, or in any official relation to, said companies; and in every case the Trust Company may make such arrangements as it shall deem necessary for the protection of the bonds hereunder.

Section 8. In case default shall be made in the payment of the principal or interest of any of the bonds or obligations at any time subject to the lien of this indenture, or of other bonds or obligations secured by the same mortgage or lien as such bonds or obligations.

held by the Trust Company, then in any such case the Trust Company may, in its discretion, cause proper proceedings to be instituted and prosecuted in some court of competent jurisdiction to foreclose or enforce the mortgage or lien by which such bonds or obligations in default are secured.

In case, at any time, any company of whose capital stock the greater part shall be held by the Trust Company hereunder shall be dissolved or liquidated, or in case all or any of the property of any such company shall be sold upon the insolvency of such company at any judicial or other sale, or in case any property covered by a mortgage securing any bonds, or subject to any lien for the payment of any obligations held by the Trust Company hereunder, shall be sold upon foreclosure of such mortgage, or by enforcement of such lien, then in any such case, if the property of such company, or the property sold, can be acquired by crediting on the bonds, obligations, claims or stock held by the Trust Company hereunder any sum accruing or to be received thereon out of the proceeds of such property, and paying not more than fifteen per cent. of the price of such property in cash, the Trust Company, in its discretion, may, but if by the Railway Company requested in writing and provided with the amount of cash necessary therefor, the Trust Company in every case shall purchase, or cause to be purchased, or permit the Railway Company to purchase such property, in the name or on behalf of the Trust Company or of the Railway Company or by purchasing trustees, and shall use, or permit the Railway Company to use such bonds, obligations, claims, and stock, so far as may be, to make payment for such property; and in case of such purchase the Trust Company shall take such steps as it may deem proper to cause such property to be vested either in the Railway Company, subject to the lien of this indenture, or in some other corporation organized or to be organized for that purpose, of whose bonded debt and capital stock all excepting the number of shares required to qualify directors shall be received and held hereunder by the Trust Company, and shall be held for the Railway Company but subject to the lien of this Indenture.

Use of pledged bonds and stock on sale of property of issuing company

Expenses
of Trust
Company
in such
proceedings
to be paid by
Railway
Company.

The Railway Company covenants that, on demand of the Trust Company, it, the Railway Company, forthwith will pay or satisfactorily provide for all expenditures incurred by the Trust Company under any of the provisions of this section, including all sums required to obtain and perfect the ownership and title to any property which the Trust Company shall purchase or cause to be purchased pursuant to the provisions of this section; and in case the Railway Company shall fail so to do, then, without impairment of, or prejudice to, any of its rights hereunder by reason of the default of the Railway Company, the Trust Company, in its discretion, may advance all such expenses and other moneys required, or may procure such advances to be made by others, and for the payment in six months thereafter, with interest, of such advances made by the Trust Company, or by others at its request, the Trust Company shall have a lien prior to the lien of this indenture, on all the bonds, obligations, shares and other property in respect of which such advances were made, and the proceeds thereof and any property acquired by means of such bonds, obligations or shares.

Trust
Company
if it does not
purchase at
foreclosure
sale, to receive
proceeds of
sale, to be
held under
Sections 8 and
9 of Article
Second.

In case the Trust Company shall not purchase or cause to be purchased the property sold at any such sale, and shall not join in a plan of reorganization as aforesaid in respect of such bonds or stock, then the Trust Company shall receive any portion of the proceeds of the sale accruing on the bonds, obligations and stocks by it held hereunder, and such proceeds, from time to time, shall be paid over to the Railway Company for the purposes and in the manner and subject to the restrictions set forth in Sections 8 and 9 of Article Second hereof.

Merger or
consolidation
or sale
permitted.

Section 9. Anything in this indenture to the contrary notwithstanding, any company all of whose shares of capital stock (except qualifying shares) shall be subject to this indenture may be merged or consolidated with, or all or any part of the property of any such company may be sold either to the Railway Company, or to any other railway company all of whose capital stock (except qualifying shares) shall then be assigned or pledged to the Trust Company hereunder, or shall be held under any of such "underlying mortgages," but no such merger, consolidation or sale shall be made except upon condition (first) that in case of any merger or consolidation all of the stock (except qualifying shares) of the consolidated company or the

Conditions of
consolidation
or merger or
sale.

company (other than the Railway Company) into which any such company shall be merged shall be received, or shall continue to be held, by the Trust Company under this indenture, or shall be received or continued to be held under some one of the "underlying mortgages"; and (second) that in case of any such merger, consolidation or sale, neither of the companies which shall be parties thereto (other than the Railway Company) nor any consolidated or new company formed thereby shall, in connection therewith, create or incur any indebtedness or any lien, charge or incumbrance upon its property unless such indebtedness, lien, charge or incumbrance shall become subject to this indenture; and (third) that in case of a merger or consolidation with, or sale to, the Railway Company this indenture shall become a lien upon the railway and all property appertaining to the railway of the company merged or consolidated with, or whose property shall be sold to, the Railway Company, subject only to pre-existing mortgages, if any, upon the property so merged, consolidated or sold.

Under the conditions aforesaid, any such merger, consolidation or sale may be made under any laws to which such company may be subject, and, upon request of the Railway Company, the Trust Company shall consent to all acts proper to carry into effect the purposes of this section.

ARTICLE SIXTH.

No recourse under or upon any obligation, covenant or agreement contained in this indenture, or in any First Terminal and Unifying Bond or coupon, or because of the creation of any indebtedness hereby secured, shall be had against any stockholder, officer or director of the Railway Company, or of any successor corporation, either directly or through the Railway Company, by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any statute or otherwise; it being expressly agreed and understood that this indenture and the obligations hereby secured are solely corporate obligations, and that no personal liability whatever shall attach to or be incurred by the stockholders, officers or directors of the Railway Company, or of any successor corporation, or any of them, because of the incurring of the indebtedness hereby authorized, or under or by reason of any of the obligations, covenants or agreements

WAIVER OF
LIABILITY OF
STOCKHOLDERS,
OFFICERS AND
DIRECTORS.

contained in this indenture, or in any of the bonds or coupons hereby secured, or implied therefrom; and that any and all personal liability of every name and nature, and any and all rights and claims against every such stockholder, officer or director, whether arising at common law or in equity, or created by statute or constitution, are hereby expressly released and waived as a condition of, and as part of the consideration for, the execution of this indenture and the issue of the bonds and interest obligations hereby secured.

BONDHOLDERS'
ACTS, HOLDINGS
AND
AUTHORITY.

Form and
proof of
execution of
instruments by
bondholders.

ARTICLE SEVENTH.

Any demand, request or other instrument, required by this indenture to be signed and executed by bondholders, may be in any number of concurrent writings of similar tenor, and may be signed or executed by such bondholders in person or by agent appointed in writing. Proof of the execution of any such demand, request or other instrument, or of the writing appointing any such agent, and of the ownership by any person of bonds, shall be sufficient for any purpose of this indenture, and shall be conclusive in favor of the Trust Company or of the Railway Company, with regard to action taken by them or either of them under such instrument, if such proof be made in the following manner:

The fact and date of the execution by any person of any such demand, request, or other instrument of writing may be proved by the certificate of any notary public or other officer authorized to take acknowledgements of deeds to be recorded in New York, that the person signing such demand, request or other instrument or writing acknowledged to him the execution thereof, or by an affidavit of a witness to such execution.

Proof of
ownership
of bonds.

The fact of the holding by any bondholder of coupon bonds transferable by delivery, and the amounts and issue numbers of such bonds, and the date of his holding the same, may be proved by a certificate executed by any trust company, bank, bankers or other depositary (wherever situated), if such certificate shall be deemed by the Trust Company to be satisfactory showing that at the date therein mentioned such person had on deposit with such deposi-

itary the bonds described in such certificate. For all purposes of this indenture and of any proceeding for the enforcement thereof, such person shall be deemed to continue the holder of such bonds until the Trust Company shall have received notice in writing to the contrary.

The ownership of registered coupon bonds or of registered bonds without coupons shall be proved by the registers of such bonds.

ARTICLE EIGHTH.

Section 1. Upon the written request of the President or of a Vice-President of the Railway Company, approved or authorized by resolution of its Board of Directors or Executive Committee, from time to time, while the Railway Company is in possession thereof, but subject to the conditions and limitations in this Section prescribed, and not otherwise, the Trustees shall release from the lien and operation of this indenture any part of the mortgaged railways and lands, provided (1) that no part of the lines of track or of the rights of way shall be released unless the use thereof no longer shall be necessary or advantageous in the operation of any of the lines of railway described in the Granting Clause hereof, or other lines subject to this indenture, and that no part of such lines of track or rights of way shall so be released if thereby the continuity of the lines of railway of the system of the Railway Company shall be broken; and (2) that no part of the other property subject to this indenture shall be released hereunder, unless at the time of such release it no longer shall be necessary or advantageous to retain the same for the operation, maintenance or use of the lines of railway, or for use in the business of the Railway Company. No such release shall be made unless the Railway Company shall have sold, or shall have contracted to sell, the property so to be released, or shall have exchanged or shall have contracted to exchange the property so to be released for other property, nor unless the trustee under any indenture constituting a prior lien on the property so sold or on part thereof, shall likewise release from the lien thereof such property subject to such prior indenture. The proceeds of any and all such sales, and all moneys received as compensation for any property subject to this indenture taken by exercise of the power of eminent domain (unless applied in

RELEASES OF
MORTGAGED
PROPERTY.

Release
permitted.

Restrictions.

Application
of proceeds of
property
released or
taken by
eminent
domain.

accordance with the requirements of indentures constituting prior liens on the property so sold or on part thereof) shall be paid to the Trust Company and shall be set apart and held in trust by it and shall be applied, at the request of the Railway Company, to the purchase of other property, real or personal (including rolling stock and equipment), which shall become subject to this indenture, or in betterments of, or additions to, the mortgaged premises. Such purchases, betterments and additions shall be made as directed by the Railway Company and the amount thereof shall be paid by the Trust Company out of such proceeds in pursuance of the written request of the Railway Company expressed over the signature of its President or one of its Vice-Presidents by order of its Board of Directors by resolution of such board, and such request shall constitute a sufficient warrant, direction and justification to the Trust Company for the payment of money as therein and thereby requested. Any new property acquired by the Railway Company to take the place of any property released hereunder, ipso facto shall become and be subject to this indenture, as fully as if specifically mortgaged or assigned hereby, but, if requested by the Trust Company, the Railway Company will convey and assign the same to the Trustees by appropriate deeds or other instruments upon the trusts and for the purposes of this indenture, and will cause such deeds or other instruments to be recorded or filed in such manner as appropriately to secure and continue the lien of this indenture thereon. The Railway Company, from time to time, while in possession of any of the property subject to this indenture, also shall have full power in its discretion to dispose of any portion of the machinery, rails, equipment and implements, at any time subject to the lien hereof, which may have become unserviceable, replacing the same by new machinery, rails, equipment or implements, of at least equal value, which shall become subject to this indenture. In no event shall any purchaser or purchasers of any property sold or disposed of under any provision of this Article Eighth be required to see the application of the purchase money.

Railway
Company
permitted
to dispose of
machinery,
rails, etc.

—to change
location of
tracks and
structures.

Section 2. The Railway Company may at any time make any change in the location of any of the tracks, station-houses, buildings or other structures upon any part of the mortgaged premises, and the Trustees

upon conveyance to them under the terms of this indenture of such new tracks, station-houses, buildings or other structures, and the premises on which the same may be erected, shall, at the request of the Railway Company, subject, however, to the provisions of Section 1 of this Article Eighth, release from the lien of this indenture, the tracks, station-houses, buildings and other structures, the location of which shall be so changed, and the premises on which they were erected, and shall execute and deliver any and all instruments necessary and proper to effect such purpose.

Section 3. The Railway Company from time to time may make changes or alterations in, or substitutions of, any leases trackage rights or contracts that are subject to this indenture, and, with the consent of the Trust Company, may terminate any such lease, trackage right or contract. In any such event, any modified, altered or substituted leases, contracts or trackage rights forthwith shall become bound by, and be subject to, this indenture, in the same manner as those previously existing. The Railway Company, may, without obtaining the consent of the Trust Company hereof, terminate any lease, trackage right or contract whereby there is granted to any other company or companies the right to use in any respect or to any extent any portion or portions of the lines of railroad of the Railway Company at the time subject to the lien of this indenture.

Section 4. In case any of the property subject to this indenture shall be in the possession of a receiver lawfully appointed, the powers in and by this Article Eighth conferred upon the Railway Company may be exercised by such receiver with the approval of the Trust Company, and if the Trust Company shall be in possession of any of such property under any provision of this indenture, then all the powers of this Article Eighth conferred upon the Railway Company may be exercised by the Trust Company in its discretion.

Section 5. A certificate under the corporate seal of the Railway Company signed or purporting to be signed by the President or a Vice-President of the Railway Company and made in pursuance of a resolution of the Board of Directors, may be received by the Trust Company as conclusive evidence of any of the facts mentioned in this Article Eighth, and shall

—to alter
leases or
trackage
contracts.

—to terminate
leases or
trackage
contracts.

Receiver or
Trust
Company
in possession
may exercise
power of
Railway
Company.

Certificate
to protect
Trust
Company.

be full warrant and protection to the Trust Company for its action on the faith thereof.

**CONCERNING
THE TRUSTEES.**

Conditions of
acceptance of
trust:

Trustees not
required to
record
indenture,
procure
insurance,
discharge
taxes, or
procure
performance
by Railway
Company.

Trust
Company
entitled to
compensation
and expenses.

Trustees not
responsible for
recitals.

Trust
Company may
assume default
not to exist
until notified.

ARTICLE NINTH.

Section 1. The Trustees accept the trusts of this indenture and agree to execute them upon the following terms and conditions, to which the parties and the holders of the First Terminal and Unifying Mortgage Bonds agree:

The Trustees shall be under no obligation to see to the record, registry, filing or re-filing of this indenture; or, while not in possession thereof, to see to the insurance of the mortgaged premises, or to the payment of taxes and assessments thereon or on the trust estate; or to the performance or observance of any of the covenants or agreements hereof on the part of the Railway Company.

The Trust Company shall be entitled to reasonable compensation for all services rendered by it in the execution of the trusts hereby created, and such compensation, as well as all reasonable expenses necessarily incurred and actually disbursed hereunder, the Railway Company agrees to pay.

The Trustees shall not be responsible in any manner whatsoever for the recitals herein contained, all of which are made by the Railway Company solely.

Unless and until the Trust Company shall have received written notice to the contrary from the holders of not less than fifteen per cent. in amount of the First Terminal and Unifying Mortgage Bonds then outstanding, the Trust Company may, for all the purposes of this indenture, assume that no default has been made in the payment of any of the First Terminal and Unifying Mortgage Bonds or of the interest thereon, or in the observance or performance of any of the covenants contained in the First Terminal and Unifying Mortgage Bonds or in this indenture; that no receiver has been appointed of the Railway Company or of its lines of railroad and property; that the Railway Company is not in default under this indenture; and that none of

the events hereinbefore denominated events of default has happened.

The Trust Company shall not be under any obligation to take any action toward the execution or enforcement of the trusts hereby created which, in its opinion will be likely to involve it in expense or liability, unless one or more of the holders of the First Terminal and Unifying Mortgage Bonds shall, as often as required by the Trust Company, furnish it security and indemnity satisfactory to it against such expense or liability; nor shall the Trust Company be required to take notice of any default hereunder unless notified in writing of such default by the holders of at least fifteen per cent. in amount of the First Terminal and Unifying Mortgage Bonds then outstanding; or to take any action in respect of any such default involving expense or liability unless requested by an instrument in writing signed by the holders of not less than fifteen per cent. in amount of the First Terminal and Unifying Mortgage Bonds then outstanding and unless tendered reasonable security and indemnity as aforesaid, anything herein contained to the contrary notwithstanding; but neither any such notice or request, nor this provision therefore, shall affect any discretion herein given to the Trust Company to determine whether or not the Trust Company shall take action in respect to such default, or take action without such request.

The Trust Company may employ agents or attorneys in fact, and shall not be answerable for the default or misconduct of any agent or attorney appointed by it in pursuance hereof, if such agent or attorney shall have been selected with reasonable care; nor for anything whatever in connection with this trust, except its own wilful misconduct or gross negligence.

The Trust Company shall be reimbursed and indemnified against any liability or damage it may sustain or incur in the premises, and shall have a lien upon the trust estate under this indenture preferentially to the First Terminal and Unifying Mortgage Bonds for its compen-

Trust Company not required to incur expense or liability without indemnity

—nor to take any action with respect to default without notice and request.

Discretionary power of Trust Company.

Trust Company authorized to employ agents.

Trust Company to have prior lien.

sation and expenses, and also for any such liability or damages.

Trust Company protected in acting on advice of counsel.

Resignation of Trustees—notice.

The Trust Company may advise with legal counsel, and any action under this indenture, taken or suffered in good faith by the Trust Company in accordance with the opinion of counsel, shall be conclusive on the Railway Company and on all holders of First Terminal and Unifying Mortgage Bonds, and the Trust Company shall be fully protected in respect thereof.

Section 2. The Trustees, or either of them, or any successor trustee, may resign and be discharged from the trust created by this indenture by giving to the Railway Company notice in writing of such resignation, specifying a date when such resignation shall take effect, which notice shall be published at least once, on a day not less than thirty days nor more than sixty days prior to the date so specified, in a daily newspaper of general circulation at that time published in the Borough of Manhattan, in the City of New York, N. Y. Such resignation shall take effect on the day specified in such notice, unless previously a successor trustee shall have been appointed as hereinafter provided, in which event such resignation shall take effect immediately upon the appointment of such successor trustee.

Removal of Trustee.

Any Trustee hereunder may be removed at any time by an instrument in writing, filed with the Trustee to be removed, and executed by the holders of two-thirds in amount of the First Terminal and Unifying Mortgage Bonds then outstanding.

Appointment of successor by bondholders.

—by Railway Company.

Section 3. In case, at any time, any Trustee hereunder shall resign or shall be removed or otherwise shall become incapable of acting, a successor may be appointed by the holders of a majority in amount of the First Terminal and Unifying Mortgage Bonds then outstanding, by an instrument or concurrent instruments signed by such bondholders or their attorneys in fact duly authorized, but until a new trustee shall be appointed by the bondholders as herein authorized, the Railway Company may, by proper instrument in writing, executed under its corporate seal by order of its Board of Directors, appoint a trustee to fill such vacancy. Any corporate trustee appointed under any of the provisions of this Article

Ninth shall always be a trust company having an office in the Borough of Manhattan, in the City of New York, N. Y., and having a capital and surplus aggregating at least two million dollars. The Trust Company, and every successor trust company trustee, shall be exempt from giving any bond or surety in respect to the execution of the trusts or powers herein contained, or otherwise in respect of the premises.

After any such appointment by the Railway Company, it shall cause notice of such appointment to be published once a week in each of four successive weeks in two daily newspapers of general circulation in the Borough of Manhattan, in the City of New York, N. Y., but any new trustee so appointed by the Railway Company shall immediately and without further act be superseded by a trustee appointed in the manner above provided by the holders of a majority in amount of the First Terminal and Unifying Mortgage Bonds.

Section 4. Any successor trustee appointed hereunder shall execute, acknowledge and deliver to the Railway Company an instrument accepting such appointment hereunder, and thereupon such successor trustee without any further act, deed or conveyance shall be invested with the appropriate estate, authority, rights, powers, duties and trusts of its predecessor in the trust hereunder with like effect as if originally named as trustee herein; and, upon the resignation or removal of any trustee, all the estate, right, title, and interest of such trustee in the trust estate shall wholly cease and determine; but nevertheless the Railway Company, its successors and assigns, will, in any and every such case, execute upon request of such trustee so appointed, any such deeds, conveyances, or assurances as shall, in the judgment of the trustee so appointed, be desirable or necessary to enable the trustee so appointed, to execute the trusts by this indenture created as fully and completely as if such appointed trustee had been originally trustee; and in every case of resignation by a trustee, or of a removal of a trustee, the trustee so resigning or removed, shall, at the request of the Railway Company, its successors or assigns, or of the trustee so appointed, make and execute such deeds, conveyances or assurances to its successors. All the conveyances herein provided for shall be at the cost of the Railway Company, its successors or assigns.

Trust Company
exempt from
giving bond.

Notice of
appointment
by Railway
Company.

Vesting
mortgaged
premises in
successor.

Merger or
consolidation
of Trust
Company.

Section 5. Any company into which the Trust Company, or any successor to it in the trusts created by this indenture may be merged, or with which it or any such successor to it may be consolidated, or any company resulting from any merger or consolidation to which the Trust Company or any successor to it shall be a party, provided such company shall be a corporation organized under the laws of the State of New York and shall do business in the Borough of Manhattan, in the City of New York, shall be the successor trustee under this indenture without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

Meaning of
term
"Trustees."

Section 6. The term "Trustees," wherever used in this indenture, means the trustees for the time being under this indenture, whether original or successor.

POSSESSION
UNTIL DEFAULT
—DEFEASANCE
CLAUSE.

Possession in
Railway
Company until
default.

ARTICLE TENTH.

Section 1. Until some default shall have been made in the due and punctual payment of some instalment of interest on, or of the principal of some one or more of the First Terminal and Unifying Mortgage Bonds at the time outstanding, or of some part of such interest or principal, or until some one or more of the events of default specified in subdivisions (b), (c) and (d) of Section 2 of Article Fourth shall have happened, the Railway Company, its successors and assigns, shall be suffered and permitted to retain actual possession of all the property subject to this indenture (other than bonds, securities, cash and other property pledged or to be pledged hereunder with the Trust Company), and to manage, operate and use the same and every part thereof, with the rights and franchises appertaining thereto, and to collect, receive, take, use and enjoy the tolls, earnings, income, rents, issues and profits thereof.

Defeasance
clause.

Section 2. If, when the First Terminal and Unifying Mortgage Bonds shall have become due and payable, the Railway Company shall well and truly pay, or cause to be paid, the whole amount of the principal and interest due upon all of the First Terminal and Unifying Mortgage Bonds and coupons then outstanding, or shall provide for the payment of such bonds and coupons by depositing with the Trust Company hereunder the entire amount due thereon for principal and interest, and also shall pay, or cause to

be paid, all other sums payable hereunder by the Railway Company, and shall well and truly keep and perform all the things herein required to be kept and performed by it according to the true intent and meaning of this indenture, then and in that case all property, rights and interests hereby conveyed or assigned or pledged, or by any deed, conveyance or other instrument in writing, conveyed or assigned or pledged to the Trustees or either of them, to be held upon the trusts and provisions of this indenture, shall revert to the Railway Company, and the estate, right, title and interest of the Trustees, shall thereupon cease, determine and become void, and the Trustees in such case, on demand of the Railway Company, and at its cost and expense, shall enter satisfaction of this indenture upon the record; otherwise the same shall be, continue and remain in full force and virtue.

Article Eleventh.

Section 1. All the covenants, stipulations, promises and agreements in this indenture contained by or in behalf of the Railway Company, shall bind its successors and assigns, whether so expressed or not.

Section 2. Nothing in this indenture shall prevent the Railway Company from taking over the property of any company.

Section 3. Nothing in this indenture shall prevent the consolidation or merger with or into the Railway Company of any company, or prevent any consolidation or merger of the Railway Company with or into any other company, or prevent the sale by the Railway Company of its property as an entirety; provided, that any such consolidation or merger shall be on such terms as to preserve and not to impair the lien or security under this indenture, or any of the rights and powers of the Trustees or of the holders of the First Terminal and Unifying Mortgage Bonds, and that any successor corporation formed by such consolidation, or the corporation into which the Railway Company shall be merged, shall, as a part of such consolidation or merger, expressly assume the due and punctual payment of the principal and interest of all the First Terminal and Unifying Mortgage Bonds, and the observance and performance of all the covenants and conditions of this indenture; and provided

SUNDAY
PROVISIONS.

Successors and
assigns of
Railway
Company
bound.

Railway
Company
permitted
hereunder to
acquire
property of
other
companies.

Consolidation
or merger or
sale permitted.

Conditions of
consolidation
or merger or
sale.

that, as a condition of any such sale of the property of the Railway Company as an entirety, the corporation to which such property shall be sold as an entirety shall, as a part of the purchase price thereof, assume the due and punctual payment of the principal and interest of all the First Terminal and Unifying Mortgage Bonds and the observance and performance of all the covenants and conditions of this indenture, and shall, simultaneously with the delivery to it of such conveyance, execute and deliver a proper indenture to the Trustees, in form satisfactory to the Trust Company, whereby such purchasing corporation shall so assume the due and punctual payment of the principal and interest of all the First Terminal and Unifying Mortgage Bonds and the observance and performance of all the covenants and conditions of this indenture.

Section 4. In case any company shall be consolidated or merged with or into the Railway Company as aforesaid, or in case the Railway Company shall be so consolidated or merged with or into any other corporation, or in case of sale of the property of the Railway Company as an entirety, the corporation formed by such consolidation or into which the Railway Company shall have been merged, or to which such sale shall have been made, upon executing and causing to be recorded an indenture with the Trustees in form satisfactory to the Trust Company whereby such corporation shall assume the due and punctual payment of the principal and interest of all the First Terminal and Unifying Mortgage Bonds and the observance and performance of all the covenants and conditions of this indenture, shall succeed to and be substituted for the Railway Company, with the same effect as if it had been named herein as the party of the first part hereto; and such corporation may thereupon cause to be signed and may issue, either in its own name or in the name of the Railway Company, any or all of the First Terminal and Unifying Mortgage Bonds which shall not theretofore have been signed by the Railway Company and delivered to the Trust Company for authentication, and the Trust Company, upon the order of such corporation, in lieu of the Railway Company, subject to all the terms, conditions and restrictions herein prescribed, shall authenticate any and all bonds which shall have been previously signed by the officers of the Railway Company and delivered to the Trust Company for authen-

Successor
corporation to
be substituted
for Railway
Company.

Issue of bonds
by successor
corporation.

tieation, and any of such bonds which such corporation shall thereafter cause to be signed and delivered to the Trust Company for that purpose. All bonds so issued shall in all respects have the same legal rank and security as the bonds theretofore or thereafter issued in accordance with the terms of this indenture, as though all of said bonds had been actually issued by the Railway Company as of the date of the execution hereof.

For every purpose of this indenture, including the execution, issue and use of any and all the First Terminal and Unifying Mortgage Bonds, the term Railway Company includes and means not only St. Louis Southwestern Railway Company, but also any such successor corporation. Every such successor corporation shall possess, and from time to time may exercise, each and every right and power hereunder of St. Louis Southwestern Railway Company in its name or otherwise, and any act or proceeding by any provision of this indenture required to be done or performed by any board or officer of the Railway Company may be done and performed with like force and effect by the like board or officer of any corporation that shall at any time be such lawful successor of the Railway Company.

Meaning of term "Railway Company."

Section 5. In order to facilitate the record of this indenture, the same may be simultaneously executed in several counterparts, each of which so executed shall be deemed to be an original; and such counterparts shall together constitute but one and the same instrument.

Execution in counterparts.

Article Twelfth.

PARTIES IN INTEREST.

Nothing in this indenture expressed or implied is intended, or shall be construed, to confer upon, or to give to, any person or corporation, other than the parties hereto and the holders of First Terminal and Unifying Mortgage Bonds, any right, remedy or claim, under or by reason of this indenture or any covenant, condition or stipulation hereof; and all the covenants, stipulations, promises and agreements in this indenture contained by or on behalf of the Railway Company shall be for the sole and exclusive benefit of the parties hereto and of the holders of First Terminal and Unifying Mortgage Bonds.

In Witness Whereof, St. Louis Southwestern Railway Company and Guaranty Trust Company of New York have caused their respective corporate seals to

Testimonium.

be hereunto affixed and this indenture to be signed by their respective Presidents or Vice-Presidents and by their respective Secretaries or Assistant Secretaries, and said Walker Hill, one of the parties of the second part, has hereunto set his hand and seal the day and year first above written.

ST. LOUIS SOUTHWESTERN
RAILWAY COMPANY,
By F. H. Britton, President.

Attest:

Arthur J. Trussell,
(Seal) Secretary.

(Seal)

GUARANTY TRUST COMPANY OF NEW YORK,
By A. J. Hemphill, President.

Attest:

E. C. Hebbard,
Secretary.

WALKER HILL

Signed, sealed and delivered on
behalf of St. Louis Southwestern
Railway Company in the presence of:

P. J. Longua
Lawrence Greer

Signed, sealed and delivered on
behalf of Guaranty Trust Company of New York in the presence of:

William H. Taylor
Otis K. Hutchinson

Signed, sealed and delivered by
Walker Hill in the presence of:

J. C. Paulus
J. H. W. Brune

State of New York,
County of New York.—ss.

Be It Remembered, that on this the
day of April, 1912, before me, the undersigned, a Notary Public, duly commissioned and acting within and for said County and State, personally came and ap-

peared F. H. Britton, to me well and personally known and personally known to me to be the President of St. Louis Southwestern Railway Company, and to be the person whose name is subscribed to the foregoing instrument as President of St. Louis Southwestern Railway Company, who, having by me been duly sworn, did depose and say that he resided in St. Louis, State of Missouri, and is the President of St. Louis Southwestern Railway Company, one of the corporations described in and which executed the foregoing instrument, and that the seal affixed to the said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said F. H. Britton acknowledged said instrument to be the free act and deed of said corporation, and he further acknowledged to me that St. Louis Southwestern Railway Company and he, in his official capacity as President of said Company, had executed the foregoing instrument for purposes and considerations therein mentioned and set forth; and the said F. H. Britton, in the presence of two attesting, competent witnesses, P. J. Longua and Lawrence Greer, acknowledged to me and declared that he, as such President of St. Louis Southwestern Railway Company, had signed the foregoing act of mortgage and now recognizes and acknowledges the signature of said corporation by him as genuine, and he further acknowledged and declared that he knew the seal of said corporation, and that the seal attached to the foregoing instrument is the genuine corporate seal of said Company, and that the same was affixed thereto by order of the Board of Directors of said Company; and on the same day also personally appeared before me Arthur J. Trussell to me personally well known and personally known to me to be the Secretary of said Company and to be the person whose name is subscribed to the foregoing instrument as Secretary of St. Louis Southwestern Railway Company, and he acknowledged to me that he had affixed the corporate seal of said Company to said instrument and signed his name thereto as Secretary by order of the Board of Directors of said Company, and that as such Secretary he had executed the same as the free act and deed of said Company, and that the said Company had executed the same for the purposes and considerations therein mentioned and set forth.

In Witness Whereof I have hereunto set my hand and official seal at the City of New York, aforesaid, this, the 24th day of April, A. D. 1912.

My commission expires March 30, 1913.

(Notarial Seal)

H. L. UTTER,
Notary Public, Kings County.
Certificate filed in New York County.

State of New York,
County of New York—ss.:

Be it remembered that on this the 24th day of April, 1912, before me, the undersigned, a Notary Public, duly commissioned and acting within and for said County and State, personally came and appeared A. J. Hemphill, to me well and personally known, and personally known to me to be the President of the Guaranty Trust Company of New York and to be the person whose name is subscribed to the foregoing instrument as President of the Guaranty Trust Company of New York, who, having by me been duly sworn, did depose and say that he resided in Spring Lake, State of New Jersey, and is the President of the Guaranty Trust Company of New York, one of the corporations described in and which executed the foregoing instrument, and that the seal affixed to the said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said A. J. Hemphill acknowledged said instrument to be the free act and deed of said corporation, and he further acknowledged to me that the Guaranty Trust Company of New York and he, in his official capacity as President of said Company, had executed the foregoing instrument for purposes and considerations therein mentioned and set forth; and the said A. J. Hemphill, in the presence of two attesting, competent witnesses, William H. Taylor and Otis K. Hutchinson, acknowledged to me and declared that he, as such President of the Guaranty Trust Company of New York, had signed the foregoing act of mortgage and now recognizes and acknowledges the signature of said corporation by him as genuine, and he further acknowledged

and declared that he knew the seal of said corporation, and that the seal attached to the foregoing instrument is the genuine corporate seal of said Company, and that the same was affixed thereto by order of the Board of Directors of said Company; and on the same day also personally appeared before me E. C. Hebbard, to me personally well known and personally known to me to be the Secretary of said Company, and to be the person whose name is subscribed to the foregoing instrument as Secretary of the Guaranty Trust Company of New York, and he acknowledged to that he had affixed the corporate seal of said Company to said instrument and signed his name thereto as Secretary by order of the Board of Directors of said Company, and that as such Secretary he had executed the same as the free act and deed of said Company, and that the said Company had executed the same for the purposes and considerations therein mentioned and set forth.

In witness whereof, I have hereunto set my hand and official seal at the City of New York, aforesaid, this, the 24th day of April, A. D. 1912.

B. G. SMITH,

[Notarial Seal] Notary Public,
Kings County, No. 147, Register's No. 5038
Certificate filed in N. Y. County, No. 127,
Register's No. 4300.

Commission expires March 30, 1914.

State of Missouri,
City of St. Louis—ss:

On this day, before me, the undersigned Notary Public, duly commissioned and acting within and for said City and State, personally appeared Walker Hill, to be known and known to me to be the person described in and who executed the foregoing instrument as Trustee, and acknowledged that he executed the same as his free act and deed, and for the purposes and considerations therein mentioned and set forth, and in the presence of two attesting competent witnesses, J. C. Paulus and J. H. W. Brune, declared that he had signed the foregoing act of mortgage and now recognizes and acknowledges his signature thereto as genuine.

In testimony whereof I have hereunto set my hand and official seal at the City of St. Louis aforesaid, this the 27th day of April, A. D., 1912.

My commission expires July 11th, 1914.

[Notarial Seal]

RHODES E. CAVE,
Notary Public,
City of St. Louis, Mo.

Supplement to Proof of Claim of Guaranty Trust Company of New York as Trustee Under Mortgage Dated January 1, 1912, of St. Louis Southwestern Railway Company Securing First Terminal and Unifying Mortgage Bonds.

(Filed March 15, 1937.)

In the District Court of the United States, Eastern Division, Eastern Judicial District of Missouri.

In the Matter of

St. Louis Southwestern Railway Company, Debtor.

In Proceedings for Reorganization of a Railroad.

No. 8497.

United States of America,
Southern District of New York,
City, County and State of New York—ss.

At the City of New York, in the Southern District of New York, on the 12th day of March, 1937, came Henry A. Theis of 62 North Woodland Street, Engiewood, New Jersey, and made oath and says as follows:

Whereas Guaranty Trust Company of New York (hereinafter sometimes referred to as the "Claimant"), as Trustee under the First Terminal and Unifying Mortgage dated January 1, 1912 (hereinafter sometimes called the "Mortgage"), made and executed on September 24, 1936, and filed herein, proof of claim with respect to bonds issued and outstanding under said Mortgage (hereinafter sometimes called the "bonds"), all as more fully set out in said proof of claim, reference to which is hereby made with the same effect as if fully incorporated herein and made a part hereof; and

Whereas, at the time said proof of claim was executed and made the Claimant was enjoined from accelerating the maturity of the bonds pursuant to the terms of the Mortgage; and

Whereas, by order herein dated February 24, 1937, the aforesaid injunction was dissolved and, pursuant to said

order, Claimant on February 25, 1937, declared the principal of all of the bonds outstanding under said Mortgage due and payable immediately on May 5, 1936, such declaration being effective as of the date last named; and

Whereas, by order herein dated February 26, 1937, the court granted leave to Claimant to file an amended claim or claims as therein more fully provided; and

Whereas, Berryman Henwood, as Trustee of the Debtor, and Claimant have, for the purposes of the aforesaid proof of claim of the Claimant and any amendment thereof as aforesaid, stipulated that the exchange value of the guilder in terms of the dollar was, and is to be taken as, \$.6778 on each of the following dates, on which the following happened, to wit: the date on which the initial petition (Petition No. 1) was filed in these proceedings and on which Order No. 1 was entered, inter alia approving said petition as properly filed, viz., December 12, 1935; the effective date of the aforesaid declaration as of which all of the bonds were declared immediately due and payable, viz., May 5, 1936; and the date on which demand, and protest of nonpayment, were made in Amsterdam, Holland, by or in behalf of Claimant, for the payment in guilders of the principal and interest of the bonds for which proof of claim was filed as aforesaid and on which Claimant made and executed its proof of claim aforesaid, viz., September 24, 1936.

Now, Therefore, Claimant files this supplement to its proof of claim aforesaid, which proof of claim continues in full force and effect and is in no way altered except as supplemented and made more definite hereby, viz.:

Each of the statements of fact set out in the above Whereas clauses is hereby affirmed and stated as a fact.

The Debtor, at and before each of the dates mentioned in the last Whereas clause above, was and still is justly and truly indebted to the Claimant in the sum of \$1,687.722 in money of the United States of America in respect of each 2490 guilders principal amount of said bonds, and in the sum of \$37.739 for the interest accrued and unpaid from July 1, 1935, to December 12, 1935, in respect of each 2490 guilders principal amount of said bonds; making a total of \$1,725.461 for principal and interest from July 1, 1935, to December 12, 1935, in respect of each 2490 guilders principal amount of said bonds; so that the total amount which was on December 12, 1935, and still is, justly and truly owing by the Debtor to the Claimant for principal and interest on all the bonds outstanding under the said Mortgage was \$37,335,525.12. Said amount does not include interest accruing subsequent

to December 12, 1935, nor amounts for compensation to the Claimant as Trustee and expenses and liabilities of the Trustee and other sums which the Debtor is obligated to pay and payment of all of which is or will be secured by the Mortgage; all of the rights of Claimant and bondholders with respect to which are hereby reserved.

This proof of claim is made for all bonds issued and outstanding under said Mortgage, but the amount of this proof of claim shall be reduced to the extent that valid individual proofs of claim are filed on behalf of said bonds or coupons by the holders thereof, personally or by proxy, and by the amount by which the value of guilders exceeds the value of any money other than guilders which any holder or holders of said bonds or coupons validly elect to receive in respect thereof.

HENRY A. THEIS,
Vice-President of Claimant Guaranty Trust Company
of New York as Trustee aforesaid.

Subscribed and sworn to before me this 12th day of March, 1937.

W. J. BURNHAM.

(Seal)

W. J. Burnham
Notary Public, New York County.

N. Y. Co. Clerk's No. 346, Reg. No. 8-B-90.
Queens Co. Clerk's No. 658, Reg. No. 2930.
Kings Co. Clerk's No. 274, Reg. No. 8416.
Nassau Co. Clerk's No. 8-B-29.
Certificate filed in Westchester Co.

Commission Expires March 30, 19.....

Filed Mar. 15, 1937. Jas. J. O'Connor, Clerk.

Protest of Berryman Henwood, Trustee, St. Louis Southwestern Railway Company; Debtor, to Proof of Claim and Supplement Thereto Filed by Guaranty Trust Company of New York, as Trustee Under Mortgage Dated January 1, 1912, of St. Louis Southwestern Railway Company Securing First Terminal and Unifying Mortgage Bonds.

(Filed May 8, 1937.)

Comes now Berryman Henwood, Trustee, St. Louis Southwestern Railway Company, Debtor, and protests proof of claim and supplement thereto filed by Guaranty Trust Company of New York, as Trustee under a certain mortgage

dated January 1, 1912, of St. Louis Southwestern Railway Company securing First Terminal and Unifying Mortgage Bonds, being proof of claim No. 251 and supplement thereto, filed herein on September 30, 1936, and March 15, 1937, respectively (and appearing at pages 1147 and 1939 of the Printed Record), and for protest, objection and exceptions thereto, Trustee avers, on information and advice of counsel:

1. That said Debtor is not indebted to said Claimant or to the holders of said bonds in the sum of 53,878,620 guilders (as claimed in said Claimant's proof of claim) or any other amount of guilders, or in the sum of \$37,335,525.12 (as claimed in said Claimant's supplement to proof of claim); that the provisions in certain of the bonds and interest coupons issued under said First Terminal and Unifying Mortgage that payment will be made, at the option of the holders of said bonds and coupons, at the Borough of Manhattan, City and State of New York, or in London, England, or in Amsterdam, Holland, or in Berlin, Germany, or in Paris, France, and that such payment shall consist of dollars in gold coin of the United States of America, of or equal to the standard of weight and fineness as it existed January 1, 1912, or pounds or guilders or marks or francs, respectively (reference being hereby made to said provisions, as set forth in said mortgage, for a particular description of said provisions, with the same force and effect as if said provisions were herein set forth at length) are contrary to the law and public policy of the United States and are wholly void and of no effect, by reason of the Joint Resolution of Congress, approved June 5, 1933 (Public Resolution No. 10 of the 73d Congress; 31 USCA, Section 463; 48 Stat. 113), and, notwithstanding the said multiple currency provisions contained in certain of said bonds and coupons, the claim on said obligations should be based, under the terms of said Joint Resolution, upon a liability to discharge the same by payment, dollar for dollar, in any coin or currency of the United States which at the time of payment is legal tender for public and private debts, and in this respect

Trustee alleges that the said bonds were issued and sold by the St. Louis Southwestern Railway Company within the United States and payment therefor was received in money of the United States in amounts less than the face amount of said bonds as expressed in United States money; that said obligations are payable in United States money and evidence a United States money debt and not a transaction in guilders or other foreign moneys; and protestant alleges further that at all times since the institution of this proceeding and prior to September 27, 1936, as well as at the time of the issuance

and sale of said bonds, the guilder was the gold monetary unit of Holland, and it was in fact and was provided by the laws of Holland to be the equivalent of .672 grams of gold nine-tenths fine, and that to allow the claim of the Guaranty Trust Company of New York herein as filed would be to allow recovery of an amount in money of the United States measured by gold, and would be tantamount to allowing the claim for the value of the gold coin of the United States of America, of or equal to the standard of weight and fineness as it existed January 1, 1912, stipulated in the bonds and coupons; and that said proof of claim and supplement thereto should be amended so that the claim under said mortgage shall be for \$21,596,000 principal amount, and interest at the rate of 5% per annum from July 1, 1935, to December 12, 1935 (said principal amount being \$42,000 less than the aggregate principal amount of bonds issued under said mortgage for the reason that bonds in the aggregate principal amount of \$42,000 were pledged in certain annuity trusts and have been returned to and are now held by the Debtor, and claimant's proof of claim should not cover said bonds), subject to reduction to the extent that valid individual proofs of claim are filed and may be allowed on behalf of said bonds or coupons by the holders thereof; and

In the alternative (in the event that it shall be finally determined that said multiple currency provisions of said mortgage are not void by reason of said Joint Resolution of Congress, and that said provisions are binding upon said Debtor), Trustee avers, on information and advice of counsel:

2. That in any event, as to such of said bonds and coupons as on December 12, 1935, were held by domestic holders or alien holders who received such bonds and coupons on or after December 12, 1935, said Debtor is not indebted to said Claimant or to the holders of said bonds and coupons in guilders or in the dollar equivalent of guilders, and that as to such domestic holders or alien holders who received such bonds and coupons on or after December 12, 1935, the multiple currency provisions of said mortgage are void and of no effect by reason of said Joint Resolution of Congress, approved June 5, 1933; and on information and belief, that said bonds and appurtenant interest coupons which remain outstanding are, or were on December 12, 1935, owned and held largely by citizens and residents of the United States of America or by domestic corporations, incorporated under the laws thereof or of the states thereof; and on information and belief, that at the time said bonds and appurtenant interest coupons were issued, a comparatively small portion of the total issue was sold by the investment bankers who had

underwritten the sale of the bonds to investors in any foreign countries, and that no payments were made in Holland at any time, and that the said multiple currency provisions were inserted in said bonds and coupons so that payment of the principal and interest of said bonds and coupons could be made to holders of said bonds and coupons who are bona fide citizens and residents of said foreign countries in the respective currencies of said foreign countries and in the respective amounts as stated in said bonds and coupons, as set out in Paragraph 1 of this protest; that holders of said bonds and coupons who are citizens and residents of the United States and holders of said bonds and coupons who are citizens and residents of Holland and who received such bonds and coupons on or after December 12, 1935, did not have and do not have at present any right to demand payment in, or to base claims for payment on, the currency of Holland or in such currency in terms of United States currency.

3. That the alleged option of any holders of said bonds or coupons whose option may be held not to have been invalidated by said Joint Resolution of Congress, approved June 5, 1933, to claim an indebtedness in guilders or guilders in terms of dollars was lost to said holders by failure to exercise the same as to coupons on or before the coupon maturity date, and as to bonds on or before the effective date of the declaration by Claimant as of which all of the bonds were declared immediately due and payable, viz., May 5, 1936; and said alleged option having lapsed, the Débtor St. Louis Southwestern Railway Company and your Trustee have elected and do hereby elect to require claims based on said bonds and coupons to be based upon payment in United States money which at the time of payment is legal tender for public and private debts, and as a result of the loss of said alleged option to said holders and the said election to pay in United States money, the obligation under said bonds and coupons is an obligation for payment in United States money only, in the face amount of said bonds and coupons.

4. That the temporary bonds and registered bonds issued under said mortgage and mentioned in said Claimant's proof of claim (at page 1150 of the Printed Record) do not bear said multiple currency provisions, and therefore any such bonds not exchanged prior to December 12, 1935, for coupon bonds issued under said mortgage and mentioned in said Claimant's proof of claim (at page 1149 of the Printed Record), and which are now outstanding, entitle the holders thereof (for whatever value, if any, that claims on pledged securities may have and to whatever extent, if any, that the filing of claims based on such securities may be necessary)

to file proofs of claim only in the aggregate principal amount of \$13,533,000, and not for any amount of guilders or in the sum of \$1,687.722 in respect of each \$1,000 bond, or in the sum of \$37.739 in respect of each \$25 coupon, to which the holders might have been entitled under the mortgage prior to December 12, 1935. Bonds of this character in the aggregate principal amount of \$23,000 were pledged in certain annuity trusts and have been returned to and are now held by the Debtor; and Claimant's proof of claim should not cover said bonds. The only bonds issued under said mortgage which bear said multiple currency clauses are the coupon bonds issued thereunder, being 8,082 bonds in the aggregate principal amount (in money of the United States) of \$8,082,000, but coupon bonds in the aggregate principal amount of \$19,000 were pledged in certain annuity trusts and have been returned to and are now held by the Debtor, and Claimant's proof of claim should not cover said bonds; that subsequent to December 12, 1935, tender was made on behalf of certain holders of temporary bonds and registered bonds of said bonds for cancellation in exchange for coupon bonds, but that said Debtor and the Debtor's Trustee declined to accept the same or to deliver coupon bonds to said holders; and that said proof of claim and supplement thereto should be amended accordingly, except as to bonds and coupons covered by valid individual proofs of claim, and which are not to be considered as a part of Claimant's proof of claim.

5. That in any event, said Guaranty Trust Company of New York, as such Trustee, has no right under the terms of the bonds or coupons or said mortgage or under amendatory Section 77 of the Bankruptcy Act to make an election on behalf of the holders of any or all of said bonds or coupons to claim an indebtedness in guilders or guilders in terms of dollars, or in any other of the several moneys mentioned in said mortgage, such election being reserved by the terms of the bonds, coupons and the mortgage to the holders of the bonds and coupons (reference being hereby made to said provisions, as set forth in said mortgage, for a particular description of said provisions, with the same force and effect as if said provisions were herein set forth at length), and that to the extent that said proof of claim and supplement thereto purport to make such election for holders of any of said bonds or coupons who have not individually made such election by making known, in accordance with the provisions of the bonds, coupons and the mortgage, the proper, timely and lawful exercise of said alleged option, said proof of claim and supplement thereto should be stricken from the record as improperly filed or, in lieu thereof, should be amended so as to set forth a claim on behalf of holders of

bonds and coupons in the aggregate amount of their bonds in money of the United States of America at the rate of \$1,000 instead of \$1,687.722 in respect of each \$1,000 bond, and at the rate of \$25 instead of \$37.739 in respect of each \$25 coupon.

6. That (in the event that it shall be finally determined that said Claimant had and has a right under the terms of the bonds, coupons and the mortgage and under amendatory Section 77 of the Bankruptcy Act to make an election in behalf of the holders of any or all of said bonds or coupons to claim an indebtedness in guilders or guilders in terms of dollars, as set forth in said proof of claim and supplement thereto) as to any of said bonds and coupons concerning which it may be finally determined that said Claimant properly claimed an indebtedness based upon guilders, the exchange value of the guilder in terms of the dollar should not be fixed as of any one of the following dates, on which the following happened, to-wit: The date on which the initial petition (Petition No. 1) was filed in these proceedings and on which Order No. 1 was entered, inter alia approving said petition as properly filed, viz., December 12, 1935; the effective date of the declaration by Claimant as of which all of the bonds were declared immediately due and payable, viz., May 5, 1936; or the date on which demand, and protest of nonpayment, were made in Amsterdam, Holland, by or in behalf of Claimant, for the payment in guilders of the principal and interest of the bonds for which proof of claim was filed as aforesaid and on which Claimant made and executed its proof of claim aforesaid, viz., September 24, 1936. Trustee avers that in such event, the value of the guilder having depreciated since the dates mentioned, the exchange value of the guilder in terms of the dollar should be fixed as of the judgment day, in accordance with the "judgment day rule" announced by the Supreme Court of the United States, and that said day will be the day on which the claim of Claimant, or such portion thereof as may be proper, or as it may be properly amended, is allowed by this Court; and that said proof of claim and supplement thereto should be amended accordingly.

7. That, in addition to the objections, exceptions and amendments suggested above, and in any event, said proof of claim and supplement thereto should be reduced to the extent that valid individual proofs of claim are filed on behalf of said bonds or coupons by the holders thereof, personally or by proxy, and by the amount by which the value of guilders exceeds the value of any money other than guilders which any holder or holders of said bonds or coupons validly

elect to receive in respect thereof, in the event it shall be finally determined that said Claimant had and has the right to exercise the alleged guilder option aforesaid for bondholders not making an individual election.

All rights of the Trustee and the Debtor in respect of said claim are hereby expressly reserved, including the right to amend this protest and to make more definite any part hereof.

Wherefore, Trustee prays that the Court enter an order requiring that said proof of claim and supplement thereto be amended in accordance with the suggestions set forth herein, or in lieu thereof that the claim be partially denied in accordance herewith and partially allowed in accordance herewith, depending upon the determination which may be made of the several issues presented by the protest, objections and exceptions contained herein.

BERRYMAN HENWOOD,
Trustee,

St. Louis Southwestern Railway Company,
Debtor,

By A. H. KISKADDON,
General Counsel.

CARLTON S. HADLEY,
Assistant General Counsel.

Dated May 8, 1937.

Filed May 8, 1937. Jas. J. O'Connor, Clerk.

Protest of St. Louis Southwestern Railway Company to
Proof of Claim and Supplement Thereto Filed by
Guaranty Trust Company of New York, as Trustee
Under Mortgage Dated January 1, 1912, of St. Louis
Southwestern Railway Company Securing First Ter-
minal and Unifying Mortgage Bonds.

(Filed May 14, 1937.)

Comes now St. Louis Southwestern Railway Company and
protests proof of claim and supplement thereto filed by Guar-
anty Trust Company of New York, as Trustee under a certain
mortgage dated January 1, 1912, of St. Louis Southwestern
Railway Company securing First Terminal and Unifying
Mortgage bonds, being proof of claim No. 251 and sup-
plement thereto, filed herein on September 30, 1936, and
March 15, 1937, respectively (and appearing at pages 1147

and 1939 of the Printed Record), and adopts as its protest, objection and exceptions thereto the protest thereto heretofore filed by Berryman Henwood, Trustee, St. Louis Southwestern Railway Company, Debtor; reference being hereby made to said protest with the same force and effect, as if its provisions were herein set forth at length.

Wherefore, protestant prays that the Court enter an order requiring that said proof of claim and supplement thereto be amended in accordance with the suggestions set forth in said Trustee's protest, or in lieu thereof that the claim be partially denied in accordance therewith, and partially allowed in accordance therewith, depending upon the determination which may be made of the several issues presented by the said protest, hereby adopted by this protestant as its own.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,
By F. C. Nicodemus, Jr.,

General Counsel

Dated May 11, 1937.

Filed May 14, 1937. Jas. J. O'Connor, Clerk.

Protest of Southern Pacific Company, Creditor and Stockholder of St. Louis Southwestern Railway Company, Debtor, to Proof of Claim and Supplement Thereto Filed by Guaranty Trust Company of New York, as Trustee Under Mortgage Dated January 1, 1912, of St. Louis Southwestern Railway Company Securing First Terminal and Unifying Mortgage Bonds.

(Filed May 14, 1937.)

Comes now Southern Pacific Company, a Kentucky corporation, a stockholder in the Debtor, owning 193,134 shares of preferred stock and 130,834 shares of common stock thereof, also a creditor of the Debtor, owning a promissory note thereof in the principal amount of \$17,882,250, secured by the pledge of collateral consisting of \$23,903,000, principal amount, of St. Louis Southwestern Railway Company General and Refunding Mortgage 5% Gold Bonds, Series "A", and \$474,000, principal amount, of Southern Illinois and Missouri Bridge Company First Mortgage 4% Bonds, proof of claim therefor having been duly filed herein as Claim No. 91 and 91-A, and a party in interest in respect to the claim of the Guaranty Trust Company of New York, and protests

proof of claim and supplement thereto filed by Guaranty Trust Company of New York, as Trustee, under a certain mortgage dated January 1, 1912, of St. Louis Southwestern Railway Company, securing First Terminal and Unifying Mortgage Bonds, being proof of claim No. 251 and supplement thereto, filed herein on September 30, 1936, and March 15, 1937, respectively (appearing at pages 1147 and 1939 of the printed record), and for protest, objection and exceptions thereto, Southern Pacific Company avers:

1. That said Debtor is not indebted to said claimant or to the holders of said bonds secured thereby in the sum of 53,878,620 guilders (as claimed in said claimant's proof of claim), or any other amount of guilders, or in the sum of \$37,335,525.12 (as claimed in said claimant's supplement to proof of claim), or in any amount in excess of the principal amount as expressed in United States money of said bonds outstanding, viz., \$21,596,000, together with interest from July 1, 1935 to December 12, 1935; that the provisions in certain of the bonds and interest coupons issued under said First Terminal and Unifying Mortgage that payment will be made, at the option of the holders of said bonds and coupons, at the Borough of Manhattan, City and State of New York, or in London, England, or in Amsterdam, Holland, or in Berlin, Germany, or in Paris, France, and that such payment shall consist of dollars in gold coin of the United States of America, of or equal to the standard of weight and fineness as it existed January 1, 1912, or pounds or guilders or marks or francs, respectively (reference being made to said provisions, as set forth in said mortgage, for a particular description thereof, with the same force and effect as if said provisions were herein set forth at length), are contrary to the law and public policy of the United States and are wholly void and of no effect, by reason of the Joint Resolution of Congress, approved June 5, 1933 (48 Stat. 113; 31 U. S. C., Sec. 463) and, notwithstanding the said multiple currency provisions contained in certain of said bonds and coupons, the claim on said obligations should be based, under the terms of said Joint Resolution, upon the liability to discharge the same by payment, dollar for dollar, in any coin or currency of the United States which at the time of payment is legal tender for public and private debts.

In this respect, Southern Pacific Company alleges that the said bonds were issued and sold by the St. Louis Southwestern Railway Company within the United States and payment therefor was received in money of the United States in amounts less than the face amounts of said bonds as expressed in United States money; that said obligations are

payable in United States money and evidence a United States money debt and not a transaction in guilders or other foreign moneys; that the primary obligation of said bonds and coupons was for the payment of United States gold coin of the standard of weight and fineness existing on January 1, 1912, and the amounts of foreign moneys mentioned in the said bonds and coupons were intended and were specified to be the equivalent of such gold coin, all of which appears from Article One, Section 4 of the said mortgage, reading as follows:

"All or any of the coupon bonds issued hereunder from time to time shall be payable at the office or agency of the Railway Company in the Borough of Manhattan in the City and State of New York, or, at the option of the holders of said coupon bonds, in the cities and countries, respectively, and in the respective currencies stated in the form of coupon bond hereinbefore set forth, but the face amount of each of such coupon bonds shall be \$1,000 in United States gold coin of the standard of weight and fineness existing on January 1, 1912, or the equivalent thereof, calculated at the rates of exchange stated in the form of coupon bond hereinbefore set forth.";

and protestant alleges further that at all times since the institution of this proceeding, and prior to September 27, 1936, as well as at the time of the issuance and sale of said bonds, the guilder was the gold monetary unit of Holland; and it was in fact and was provided by the laws of Holland to be the equivalent of .672 grams of gold nine-tenths fine, and that to allow the claim of the Guaranty Trust Company herein as filed would be to allow recovery of an amount of money of the United States measured by gold, and would be tantamount to allowing the claim for the value of the gold coin of the United States of America, of or equal to the standard of weight and fineness as it existed on January 1, 1912, stipulated in the bonds and coupons; and that said proof of claim and supplement thereto should be amended so that the claim under said mortgage shall be for \$21,596,000, principal amount, with interest at the rate of 5% per annum from July 1, 1935 to December 12, 1935, subject to reduction to the extent that valid individual proofs of claim are filed and may be allowed on behalf of said bonds and coupons by the holders thereof;

2. That in any event, as to such of said bonds and coupons as on December 12, 1935 were held by domestic holders, or by alien holders who received such bonds and coupons on or after June 5, 1933, said Debtor is not indebted to said claimant or the holders of said bonds and coupons in guilders or

in the dollar equivalent of guilders, and that as to such domestic holders or alien holders who received such bonds and coupons on or after June 5, 1933, the multiple currency provisions of said mortgage are void and of no effect by reason of the Joint Resolution of Congress of June 5, 1933; and on information and belief, that said bonds and appurtenant interest coupons which remain outstanding are, and were on December 12, 1935, owned and held largely by citizens and residents of the United States of America or by domestic corporations incorporated under the laws thereof or of the states thereof; and on information and belief, that at the time said bonds and appurtenant interest coupons were issued, a comparatively small portion of the total issue was sold by the investment bankers who had underwritten the sale of the bonds to investors in foreign countries, and that no payments were made in Holland at any time, and that the said multiple currency provisions were inserted in said bonds and coupons so that payment of the said principal and interest of said bonds and coupons could be made to the holders of said bonds and coupons who were bona fide citizens and residents of said foreign countries in the respective currencies of said foreign countries and in the respective amounts as stated in said bonds and coupons; that holders of said bonds and coupons who are citizens and residents of the United States and holders of said bonds and coupons who are not citizens and residents of the United States and who acquired such bonds and coupons from United States residents on or after June 5, 1933, did not have and do not have at present any right to demand payment in, or to base claims for payment on, the number of guilders specified in said bonds and coupons as the equivalent of United States gold coin of the standard of weight and fineness existing on January 1, 1912;

3. That Southern Pacific Company is a holder as pledgee of \$23,903,000, face amount, St. Louis Southwestern Railway Company General and Refunding Mortgage 5% Gold Bonds, by which bonds the Debtor promised to pay to the holders thereof the face amount thereof, together with interest thereon, in gold coin of the United States of America of or equal to the standard of weight and fineness as it existed on the first day of July, 1930; that by reason of said provision contained in said obligations, the holder of said bonds was protected by the contract of the Debtor against loss resulting from reduction of the gold content of the United States dollar; that the protection thus afforded to the holders of the said General and Refunding Bonds, by the contract of the Debtor, against depreciation in the value of the United States

dollar was as full, complete and adequate as the protection afforded to the holders of the St. Louis Southwestern Railway Company First Terminal and Unifying Bonds, by the provisions contained in those bonds as above set forth, against such depreciation that protestant is in all respects similarly situated to the holders of the First Terminal and Unifying Mortgage Bonds, and particularly the holders thereof who are citizens, residents or nationals of the United States of America, and it, as well as other such domestic bondholders, must receive income and meet expenses and obligations in the money of the United States of America constituting legal tender at the time of receipt or payment; that if the claims of the holders of the First Terminal and Unifying Mortgage Bonds or the claim of the Guaranty Trust Company of New York in their behalf be allowed in an amount in excess of the face amount of their said bonds and coupons as expressed in United States money, such additional allowance would be largely at the expense and to the damage of this protestant and of other holders of the Debtor's General and Refunding Mortgage Gold Bonds; that if the said Joint Resolution of Congress of June 5, 1933, should be interpreted to render invalid the provisions contained in the said General and Refunding Mortgage Gold Bonds for payment in gold coin of the United States of America of the standard of weight and fineness existing on July 1, 1930 and not to render invalid or ineffective the above set forth provisions of the First Terminal and Unifying Bonds for payment in United States gold coin, or, at the option of the holder, in specified foreign moneys, intended a. the equivalent of such gold coin, and should cause or permit the claims in behalf of the holders of said First Terminal and Unifying Mortgage Bonds to be enhanced by reason of the said multiple currency provision, at the cost and expense of the holders of the General and Refunding Bonds, the said Joint Resolution of Congress of June 5, 1933, as so interpreted and applied, would be arbitrary, capricious, and would discriminate without reasonable basis, against the holders of General and Refunding Mortgage Bonds, containing gold clauses, and in favor of the holders of First Terminal and Unifying Bonds, containing the said multiple currency provision, and would deny to this protestant and to other holders of the said General and Refunding Bonds the equal protection of the laws and it and they would be deprived of property without due process of law in contravention of the Fifth Amendment to the Constitution of the United States of America;

4. That the alleged option of any holders of said First Terminal and Unifying Mortgage Bonds or coupons to claim

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an indebtedness in guilders or guilders in terms of dollars was lost to said holders by failure to exercise the same as to coupons on or before the coupon maturity date, and as to bonds on or before the effective date of the declaration by claimant as of which all of the bonds were declared immediately due and payable, viz., May 5, 1936; and, upon the lapse of said alleged option, the said bonds and coupons were payable solely in United States money in the amounts thereof specified therein, and the Debtor has elected for said bonds and coupons to be payable in United States money in said amounts;

5. That said Guaranty Trust Company of New York, as the Trustee under the said First Terminal and Unifying Mortgage, has no right under the terms of the bonds or coupons or said mortgage or under amendatory Section 77 of the Bankruptcy Act, to make an election; on behalf of the holders of any or all of said bonds or coupons, to claim an indebtedness in guilders or guilders in terms of dollars, or in any other of the several moneys mentioned in said mortgage, such election being reserved by the terms of the bonds, coupons and the mortgage, to the holders of the bonds and coupons, (reference being hereby made to said provisions, as set forth in said mortgage, for a particular description of said provisions, with the same force and effect as if said provisions were herein set forth at length), and that to the extent that said proof of claim and supplement thereto purport to make election to receive payment in guilders for holders of any of said bonds or coupons who have not individually made such election, by presenting their bonds or coupons for payment in Amsterdam on or before the maturity date of said bonds or coupons or in such other manner as may be permitted by the provisions of the bonds, coupons or mortgage, said proof of claim and supplement thereto should be stricken from the record as improperly filed or, in lieu thereof, should be amended so as to set forth a claim on behalf of holders of bonds and coupons in the aggregate amount of their bonds in money of the United States of America at the rate of \$1,000 instead of \$1,687.722 in respect of each \$1,000 bond, and at the rate of \$25 instead of \$37.739 in respect of each \$25 coupon;

6. That as to any of said First Terminal and Unifying Bonds and coupons concerning which it may be finally determined that said claimant properly claimed an indebtedness based upon guilders, the amount of the claim as expressed in money of the United States should not be determined upon the basis of the value of the guilder on December 12, 1935, May 5, 1936, or September 24, 1936, or upon any

date prior to the judgment day, viz., the day on which the claims or such portion thereof as may be proper, are allowed by this court; and that said proof of claim and supplement thereto should be amended accordingly.

7. That, in addition to the objections, exceptions and amendments suggested above, and in any event, said proof of claim and supplement thereto should be reduced to the extent that valid individual proofs of claim are filed on behalf of said bonds or coupons by the holders thereof, personally or by proxy, and by the amount by which the value of guilders exceeds the value of any money other than guilders which any holder or holders of said bonds or coupons validly elect to receive in respect thereof, in the event it shall be finally determined that said claimant had and has the right to exercise the alleged guilder option aforesaid for bondholders not making individual election:

All rights of this protestant in respect to said claim are hereby expressly reserved, including the right to amend this protest and to make more definite any part thereof.

Wherefore, your protestant prays that the Court enter an order requiring that said proof of claim and supplement thereto be amended in accordance with the objections set forth herein, or in lieu thereof that the claim be partially denied in accordance herewith, and partially allowed in accordance herewith, depending upon the determination which may be made of the several issues presented by the protest, objections and exceptions contained herein.

SOUTHERN PACIFIC COMPANY,

By F. VAN NOTE,

Vice-President.

BEN C. DEY and
GEORGE L. BULAND,

Counsel for Southern Pacific Company,
165 Broadway,
New York, N. Y.

State of New York,

County of New York—ss.:

F. Van Note, being first duly sworn, deposes and says that he is the Vice President of Southern Pacific Company, the protestant above named, a Kentucky corporation, and that he has read the foregoing protest and knows the contents thereof, and that the statements contained therein are true,

according to the best of his knowledge, information and belief.

F. VAN NOTE.

Subscribed and sworn to before me this seventh day of May, 1937.

(Seal)

WARREN FAIRBROOK,
Notary Public, New York County
Clerk's No. 5, Register's No. 9-F-41
Commission Expires March 30,
1939.

Filed May 14, 1937. Jas J. O'Connor, Clerk.

Supplemental Protest of Berryman Henwood, Trustee, St. Louis Southwestern Railway Company, Debtor, to Proof of Claim and Supplemental Thereto Filed by Guaranty Trust Company of New York, as Trustee Under Mortgage Dated January 1, 1912, of St. Louis Southwestern Railway Company Securing First Terminal and Unifying Mortgage Bonds.

(Filed Nov. 6, 1937.)

Comes now Berryman Henwood, Trustee, St. Louis Southwestern Railway Company, Debtor, and supplements his protest against proof of claim and supplement thereto filed by Guaranty Trust Company of New York, as Trustee under a certain mortgage dated January 1, 1912, of St. Louis Southwestern Railway Company securing First Terminal and Unifying Mortgage Bonds, being proof of claim No. 251 and supplement thereto, filed herein on September 30, 1936, and March 15, 1937, respectively (and appearing at pages 1147 and 1939 of the Printed Record), and for additional protest, objections and exceptions thereto, Trustee avers

That said First Terminal and Unifying Mortgage Bonds were issued by the St. Louis Southwestern Railway Company, a Missouri corporation, in consideration of an amount of United States money less than the principal amount, (as expressed in United States money) of said bonds. That an increase of the indebtedness of the St. Louis Southwestern Railway Company on account of the principal of said bonds over and above the principal amount of said bonds, as expressed in United States money, as claimed by claimant herein or in any amount whatever, would constitute a fictitious increase of indebtedness of the St. Louis Southwestern Railway Company for which it did not receive an equivalent in money paid, labor done, or property actually received; that

any such increase in the indebtedness of said railway company on account of its said First Terminal and Unifying Mortgage Bonds over and above the principal amount of said bonds, as expressed in United States money, is prohibited and void by reason of Article XII, Section 8, of the Constitution of the State of Missouri, and of the Statutes of said State, particularly Section 4546, Rev. Stat. of Missouri, 1929, and is contrary to the public policy of Missouri.

This supplemental protest is not intended to alter or amend the Trustee's protest filed herein on May 8, 1937, the allegations herein being in addition to those contained in said protest, which remains in full force and effect. All rights of the Trustee and the Debtor in respect of said claim are hereby expressly reserved, including the right to amend his protest filed herein on May 8, 1937, or this supplemental protest and to make more definite any part thereof or hereof.

Wherefore, Trustee prays that the Court enter an order requiring that said proof of claim and supplement thereto be amended in accordance with the suggestions set forth in said protest filed herein on May 8, 1937, and herein, or in lieu thereof that the claim be partially denied in accordance therewith and herewith, depending upon the determination which may be made of the several issues presented by said protest, and the protest, objections and exceptions contained herein.

BERRYMAN HENWOOD,
Trustee, St. Louis Southwestern
Railway Company, Debtor,
By A. H. Kiskaddon,

General Counsel.

CARLETON S. HADLEY,
Assistant General Counsel.

Dated November 6, 1937.

Filed Nov. 6, 1937. Jas. J. O'Connor, Clerk.

Supplemental Protest of St. Louis Southwestern Railway Company to Proof of Claim and Supplement Thereto Filed by Guaranty Trust Company of New York, as Trustee Under Mortgage Dated January 1, 1912, of St. Louis Southwestern Railway Company Securing First Terminal and Unifying Mortgage Bonds.

(Filed Nov. 6, 1937.)

Comes now St. Louis Southwestern Railway Company, and supplements its protest against proof of claim and supple-

ment thereto filed by Guaranty Trust Company of New York, as Trustee under a certain mortgage dated January 1, 1912, of St. Louis Southwestern Railway Company securing First Terminal and Unifying Mortgage Bonds, being proof of claim No. 251 and supplement thereto, filed herein on September 30, 1936, and March 15, 1937, respectively (and appearing at pages 1147 and 1939 of the ~~Pr~~eed Record), and adopts as its supplemental protest, objections and exceptions thereto the supplemental protest thereto heretofore filed by Berryman Henwood, Trustee, St. Louis Southwestern Railway Company, Debtor, reference being hereby made to said supplemental protest with the same force and effect as if its provisions were herein set forth at length.

Wherefore, protestant prays that the Court enter an order requiring that said proof of claim and supplement thereto be amended in accordance with the suggestions set forth in said Trustee's protest and supplement thereto, or in lieu thereof that the claim be partially denied in accordance therewith, and partially allowed in accordance therewith, depending upon the determination which may be made of the several issues presented by the said protest and supplemental thereto, hereby adopted by this protestant as its own.

ST. LOUIS SOUTHWESTERN RAIL-
WAY COMPANY,
By A. H. Kiskaddon,

CARLETON S. HADLEY,
Its Attorneys.

Dated November 6, 1937.

Filed Nov. 6, 1937. Jas. J. O'Connor, Clerk.

Supplemental Protest of Southern Pacific Company, Creditor and Stockholder of St. Louis Southwestern Railway Company, Debtor, to Proof of Claim and Supplement Thereto Filed by Guaranty Trust Company of New York, as Trustee Under Mortgage Dated January 1, 1912, of St. Louis Southwestern Railway Company Securing First Terminal and Unifying Mortgage Bonds.

(Filed Nov. 6, 1937.)

Comes now Southern Pacific Company and supplements its protest against proof of claim and supplement thereto filed by Guaranty Trust Company of New York, as Trustee under

a certain mortgage dated January 1, 1912, of St. Louis Southwestern Railway Company securing First Terminal and Unifying Mortgage Bonds, being proof of claim No. 251 and supplement thereto, filed herein on September 30, 1936, and March 15, 1937, respectively (and appearing at pages 1147 and 1939 of the Printed Record), and for additional protest, objections and exceptions thereto, Southern Pacific Company alleges:

That said First Terminal and Unifying Mortgage Bonds were issued by the St. Louis Southwestern Railway Company, a Missouri corporation, in consideration of an amount of United States money less than the principal amount, (as expressed in United States money) of said bonds. That an increase of the indebtedness of the St. Louis Southwestern Railway Company on account of the principal of said bonds over and above the principal amount of said bonds, as expressed in United States money, as claimed by claimant herein or any amount whatever, would constitute a fictitious increase of indebtedness of the St. Louis Southwestern Railway Company for which it did not receive an equivalent in money paid, labor done, or property actually received; that any such increase in the indebtedness of said railway company on account of its said First Terminal and Unifying Mortgage Bonds over and above the principal amount of said bonds, as expressed in United States money, is prohibited and void by reason of Article XII, Section 8, of the Constitution of the State of Missouri, and of the Statutes of said State, particularly Section 4546, Rev. Stat. of Missouri, 1929, and is contrary to the public policy of Missouri.

This supplemental protest is not intended to alter or vary the Southern Pacific Company's protest heretofore filed herein, the allegations herein being in addition to those contained in said protest, which remains in full force and effect. All rights of Southern Pacific Company in respect of said claim are hereby reserved, including the right to amend its protest and this supplemental protest and to make more definite any part thereof or hereof.

Wherefore, Southern Pacific Company prays that the Court enter an order requiring that said proof of claim and supplement thereto be amended in accordance with the suggestions set forth in the protest heretofore filed by Southern Pacific Company and in this supplemental protest, or in lieu thereof, that the claim be partially denied in accordance therewith and herewith, depending upon the determination

which may be made of the several issues presented by said protest and this supplemental protest.

SOUTHERN PACIFIC COMPANY,

By F. Van Note,
Vice President.

BEN C. DEY,
GEORGE L. BULAND,

Counsel for Southern Pacific Company,
165 Broadway, New York, N. Y.

State of New York,
County of New York—ss.

F. Van Note, being first duly sworn, deposes and says that he is the Vice President of Southern Pacific Company, the protestant above named, a Kentucky corporation, and that he has read the foregoing supplemental protest and knows the contents thereof, and that the statements contained therein are true, according to the best of his knowledge, information and belief.

F. VAN NOTE

Subscribed and sworn to before me this 13th day of October, 1937.

WARREN FAIRBROOK,

(Seal)

Notary Public, New York County.
Clerk's No. 5, Register's No. 9-F-41.

Commission Expires March 30, 1939.

Filed Nov. 6, 1937. Jas. J. O'Connor, Clerk.

Record Entry of Hearing on Proof of Claim of Guaranty Trust Company. Before Hon. Charles B. Davis, Court No. 1.

November 26, 1937.

Hearing on Proof of Claim of Guaranty Trust Company of New York, as Trustee, under St. Louis Southwestern Ry. Co., First Terminal & Unifying Mortgage and protests thereto commenced, concluded and issues submitted to the Court on briefs to be hereafter presented.

Order on Claim of Guaranty Trust Company of New York
Trustee Under St. Louis Southwestern Railway Com-
pany First Terminal and Unifying Mortgage.

(Filed Mar. 21, 1938.)

[Order No. 276]

In the District Court of the United States, Eastern Division,
Eastern Judicial District of Missouri.

In the Matter of:

St. Louis Southwestern Railway Company, Debtor.

In Proceedings for Reorganization of a Railroad.
No. 8497.

Guaranty Trust Company of New York, as trustee under the St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage, dated January 1, 1912, having filed a proof of claim herein and a supplement thereto, claiming \$37,335,525.12 as the amount due on principal and interest on all the bonds outstanding under said Mortgage, as of December 12, 1935, with the proviso that the amount of said proof of claim shall be reduced to the extent that valid individual proofs of claim are filed on behalf of said bonds or interest coupons by the holders thereof, personally or by proxy, and by the amount by which the value of the guilders exceeds the value of any money other than guilders which any holder or holders of said bonds or coupons validly elect to receive in respect thereof, and protests and supplemental protests against said proof of claim and supplement thereto having been filed by Berryman Henwood, Trustee, St. Louis Southwestern Railway Company, Debtor; St. Louis Southwestern Railway Company, and Southern Pacific Company, a stockholder in and creditor of the said Debtor.

And the matter having been set down for hearing at St. Louis, Missouri, on November 26, 1937, and Guaranty Trust Company of New York, trustee; Frank C. Rand, trustee; E. Stanley Glines, W. Rodman Peabody and J. Hambleton Ober, as a Protective Committee for Holders of St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage Bonds; Chemical Bank & Trust Company, trustee under St. Louis Southwestern Railway Company General and Refunding Mortgage; Berryman Henwood, Trustee, St. Louis Southwestern Railway Company, Debtor; St. Louis Southwestern Railway Company, and Southern Pacific Company, having appeared by counsel,

And said hearing having been had and completed, and the Court having considered the stipulation of facts, dated November 8, 1937, and filed herein on November 11, 1937, and the other evidence, and the Court having considered the statements, arguments and briefs of counsel, and the Court having made its findings of fact and conclusions of law and being fully advised in the premises,

It Is Ordered:

That the proof of claim of Guaranty Trust Company of New York, as Trustee under St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage, being Claim No. 251 verified September 24, 1936, and filed herein, as amended by the supplement thereto verified March 12, 1937, and filed herein, be and it hereby is allowed as a claim in the amount of \$5,636,000 for principal and \$126,027.16 for interest on 5,636 bonds issued under said Mortgage, said allowance being \$1,000 for each of the said bonds as principal plus interest on said sum at the rate of 5% per annum from July 1, 1935, to December 12, 1935;

That the issues between the claimant Guaranty Trust Company of New York, Trustee, and the protestants having been severed by said stipulation dated November 8, 1937, with respect to the claims of all First Terminal and Unifying Mortgage bondholders (trustees or otherwise) who have filed separate proofs of claim in this proceeding, the determination herein and this order thereon are made without prejudice to the rights of said bondholders either upon their said separate proofs of claim or upon the said proof of claim of Guaranty Trust Company of New York, Trustee, as amended;

That in the event and to the extent that such separate proofs of claim of First Terminal and Unifying Mortgage bondholders (trustees or otherwise) filed herein shall not hereafter be allowed, whether on the ground of invalid filing or any other ground, claimant Guaranty Trust Company of New York, as Trustee, on their behalf shall be entitled to an additional allowance in respect of its said proof of claim, in the amount of \$1,022,3611 on account of principal and interest in respect of each \$1,000 principal amount of bonds represented by such separate proofs of claim, and shall be at liberty to apply to this Court at the foot of this order for such further allowance;

That the claim for any additional amount on account of the principal and interest accrued to December 12, 1935, on the said 5,636 bonds, with respect to which individual proofs of claim have not been filed, be and hereby is disallowed; and

That no determination is hereby made with respect to interest accruing subsequent to December 12, 1935, and amounts for compensation to the claimant Guaranty Trust Company of New York, as Trustee, and expenses and liabilities of said Trustee and any other sums which the Debtor St. Louis Southwestern Railway Company may be obligated to pay and which may be secured by the said Debtor's First Terminal and Unifying Mortgage.

CHARLES B. DAVIS,
District Judge.

Dated March 21, 1938.

Filed Mar. 21, 1938. Jas. J. O'Connor, Clerk.

Findings of Fact and Conclusions of Law On Issues Presented by Claim of Guaranty Trust Company of New York, Trustee Under St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage, and Protests Thereto.

(Filed Feb. 23, 1938.)

In the District Court of the United States, Eastern Division,
Eastern Judicial District of Missouri.

In the Matter of:

St. Louis Southwestern Railway Company, Debtor.

In Proceedings for Reorganization of a Railroad.

No. 8497.

Guaranty Trust Company of New York, as trustee under the St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage, dated January 1, 1912, filed a proof of claim herein and a supplement thereto, claiming \$37,335,525.12 as the amount due on principal and interest on all the bonds outstanding under said Mortgage, as of December 12, 1935, with the proviso that the amount of said proof of claim shall be reduced to the extent that valid individual proofs of claim are filed on behalf of said bonds or interest coupons by the holders thereof, personally or by proxy, and by the amount by which the value of the guilders exceeds the value of any money other than guilders which any holder or holders of said bonds or coupons validly elect to receive in respect thereof. Protests and supplemental protests against said proof of claim and supplement thereto were filed by Berryman Henwood, Trustee, St. Louis Southwestern Railway Company, Debtor; St. Louis Southwestern Railway

Company, and Southern Pacific Company, a stockholder in and creditor of the said Debtor.

The matter was set down for hearing at St. Louis, Missouri, on November 26, 1937, and Guaranty Trust Company of New York, trustee; Frank C. Rand, trustee; E. Stanley Glines, W. Rodman Peabody and J. Hambleton Ober, as a Protective Committee for Holders of St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage Bonds; Chemical Bank & Trust Company, trustee under St. Louis Southwestern Railway Company General and Refunding Mortgage; Berryman Henwood, Trustee; St. Louis Southwestern Railway Company; Southern Pacific Company; and Horace A. Davis, Benjamin S. Lichtenstein and Sylvan Gotshal, as a Protective Committee for Holders of Stephenville North & South Texas Railway Company First Mortgage Bonds and Central Arkansas and Eastern Railroad Company First Mortgage Bonds, appeared by counsel.

Said hearing having been had and completed, and the Court having considered the stipulation of facts, dated November 8, 1937, and filed herein on November 11, 1937, and the other evidence, and the Court having considered the statements, arguments and briefs of counsel, the Court makes its findings of fact and conclusions of law, as follows:

Findings of Fact.

The Court finds the facts to be as follows:

1. Guaranty Trust Company of New York is a corporation incorporated under the laws of the State of New York, and carrying on business at No. 140 Broadway, in the Borough of Manhattan, City, County and State of New York.
2. The Debtor St. Louis Southwestern Railway Company is a Missouri corporation, authorized to do business as a common carrier by railroad in the States of Missouri, Illinois, Arkansas, Tennessee and Louisiana. Said Debtor, on December 12, 1935, filed a petition for reorganization under amendatory Section 77 of the Bankruptcy Act. In and by an order of this Court dated December 12, 1935, the petition of said Debtor was approved as properly filed under said amendatory Section 77. Subsequent thereto, this Court appointed Berryman Henwood as Trustee of the property of said Debtor, who thereafter duly qualified and is now acting as such Trustee.
3. Southern Pacific Company is a corporation incorporated under the laws of the State of Kentucky. It is a holder of stock of the Debtor and of a note of the Debtor in

principal amount of \$17,882.250. As partial security for note Southern Pacific Company holds \$23,903,000 principal amount of the Debtor's General and Refunding Mortgage Five Per Cent. Gold Bonds. Said Bonds contain the promise of the Debtor to pay the holders thereof the face amount thereof, together with interest thereon, in gold coin of the United States of America of or equal to the standard weight and fineness as it existed on the first day of July, 1912. Other bonds issued under other indentures of the Debtor contain provisions for payment in gold coin of the United States of the standard of weight and fineness, prevailing at the time of issuance of such bonds, but no bonds of the Debtor other than the First Terminal and Unifying Mortgage Bonds (on which the proof of claim herein is based) contain provision for alternative payment in a fixed amount of foreign moneys.

Said Debtor, shortly prior to April 24, 1912, pursuant to corporate action, authorized the creation of an issue of bonds to be known as its First Terminal and Unifying Mortgage Bonds (hereinafter sometimes called the "Bonds"), to be emitted in aggregate principal amount as specified in, to be issued in manner and form as provided by, and to be secured by, an indenture of mortgage on the property of the Debtor or therein described. In order to secure the payment of principal and interest of all the bonds issued and to be emitted under said indenture according to their tenor and intent, and to secure the performance of all the covenants and stipulations in said indenture contained, the Debtor, on or about April 24, 1912, in the United States of America, pursuant to corporate action, made and executed under its corporate seal, and delivered to Guaranty Trust Company of New York and Walker Hill, an individual citizen of the State of Missouri, as Trustee, an indenture of mortgage (herein sometimes called the "indenture"), dated January 1, 1912, a true copy of which is annexed to the proof of claim and marked Schedule A (Claimant's Exhibit 1). Guaranty Trust Company of New York and Walker Hill in the United States of America duly accepted the trust created by the mortgage and signed in the execution thereof to evidence such acceptance. Walker Hill having died, Frank C. Rand, an individual citizen of the State of Missouri, was appointed and became Successor Trustee to Walker Hill, on or about September 25, 1912, and still continues as such. Subsequent to the execution and delivery of the indenture and in accordance with provisions thereof, the Debtor pledged and delivered to

the Claimant as Trustee, other securities not specifically described in the indenture.

The preamble to the indenture provides in part as follows:

" * * * said bonds, both as to principal and interest, to be payable at the office or agency of the Railway Company in the Borough of Manhattan, in the City and State of New York, in gold coin of the United States of America of or equal to the standard of weight and fineness as it existed January 1, 1912 (the coupon bonds also to be payable, both as to principal and interest, at such places in the following cities in foreign countries as the Board of Directors may from time to time designate, viz.: London, England, or Amsterdam, Holland, or Berlin, Germany, or Paris, France), * * * "

Article First, Section 4, of the indenture provides:

"All or any of the coupon bonds issued hereunder from time to time shall be payable at the office or agency of the Railway Company in the Borough of Manhattan in the City and State of New York, or, at the option of the holders of said coupon bonds, in the cities and countries, respectively, and in the respective currencies stated in the form of coupon bond hereinbefore set forth, but the face amount of each of such coupon bonds shall be \$1,000 in United States gold coin of the standard of weight and fineness existing on January 1, 1912, or the equivalent thereof, calculated at the rates of exchange stated in the form of coupon bond hereinbefore set forth. The principal amount of First Terminal and Unifying Bonds which the Railway Company shall be entitled to issue under the provisions of this indenture shall be ascertained at the like rate or rates of exchange, and, for all purposes of this indenture and of said bonds, the indebtedness represented by said bonds in United States gold coin, as aforesaid, shall be calculated at the like rate or rates of exchange."

The form of coupon bond, as provided in the indenture, is as follows:

"St. Louis Southwestern Railway Company, a corporation of the State of Missouri (hereinafter called the Railway Company), for value received, hereby promises to pay to the bearer, or, if registered, to the registered holder, of this bond, on the first day of January, 1952, at its office or agency in the Borough of Manhattan, City and State of New York, One Thousand Dollars in gold coin of the United States of America, of or equal to the standard of weight and fineness as it existed January 1, 1912, or in London, England, £205 15s 2d, or in Amsterdam, Holland, 2490 guilders, or in Berlin,

Germany, marks 4200, D. R. W., or in Paris, France, 5180 francs, and to pay interest thereon, at the rate of five per cent. per annum, from the first day of January, 1912, in said respective currencies, semi-annually on the first day of January and the first day of July in each year, until payment of said principal sum, but only upon presentation and surrender, as they severally mature, of the interest coupons annexed hereto. Payment of the principal and interest of this bond will be made, at the holder's option, at the office or agency of the Railway Company in the Borough of Manhattan, in the City and State of New York, or at designated offices in the foreign cities and countries above mentioned. Both the principal and interest of this bond shall be paid without deduction for any tax or governmental charge which the Railway Company or the Trustees under the mortgage and deed of trust, hereinafter mentioned, may be required or permitted to pay or to retain therefrom under any present or future law of the United States of America or of any state, territory, county, municipality or other taxing authority therein."

The form of the interest coupon is as follows:

"No.

| | |
|----------------|-----------------|
| \$25. | \$25. |
| 105.05 Marks. | £5 2s 10½d. |
| 129.50 Francs. | 62.25 Guilders. |

On the first day of , 19 , St. Louis South-western Railway Company will pay to the bearer, upon presentation and surrender of this coupon for cancellation, at its office or agency in the Borough of Manhattan, in the City of New York, Twenty-five Dollars (\$25) in United States gold coin, or in London, England, £5 2s. 10½d. Sterling, or in Amsterdam, Holland, 62.25 guilders, or in Berlin, Germany, 105.05 marks, or in Paris, France, 129.50 francs, being six months interest then due upon its First Terminal and Unifying Mortgage Bond, No."

The registered bonds did not contain provision for payment in foreign countries, but by their terms entitled the registered owner at his option to surrender the same for cancellation and in exchange for a like amount of the principal thereof, in coupon bonds.

5. The following bonds were authenticated by Guaranty Trust Company of New York as Trustee under the indenture, and were by it delivered to or on the order of the Debtor, and are now held by various persons other than the Debtor, except as hereinbelow in this paragraph otherwise stated:

(1) 8,105 Bonds in the form of coupon bonds, in the form set out beginning on page 3 of the indenture (42 of which are held by the Debtor);

(2) Temporary Bonds of various denominations in the aggregate principal amount of \$3,425,000, payable to bearer, issued pursuant to Section 5 of Article First of the indenture, in the form attached to the proof of claim as Schedule B;

(3) One registered bond in the principal amount of \$10,108,000, in the form beginning on page 7 of the indenture which at the request of the Debtor has been issued in exchange for coupon bonds of a like principal amount.

6. Claimant's Exhibit 6 is a true copy of a resolution adopted by the Board of Directors of St. Louis Southwestern Railway Company on December 3, 1935; with respect to the omission of payments of interest due January 1, 1936; on the Bonds, and that a copy of said resolution was sent to Guaranty Trust Company of New York, trustee, shortly after December 3, 1935. Payments of the installments of interest payable on such Bonds on January 1, 1936, and thereafter were not and have not been made, and payments of the installments of interest payable on January 1, 1936, and thereafter, under the terms of the second mortgage of the Debtor dated February 12, 1891, were not and have not been made.

7. The Debtor has never maintained an office or agency in Amsterdam, Holland, for the payment of interest or principal on said bonds. In reply to an inquiry of the Committee on Stock List of the New York Stock Exchange regarding payment in foreign moneys in respect of the Bonds, the Debtor, in January, 1934, notified said Exchange that the Company had no foreign paying agent, and had not provided funds for the payment of coupons pertaining to the Bonds in any currency other than that of the United States; and on or about January 13, 1934, the office of the Secretary of the New York Stock Exchange published its Bulletin containing a statement to that effect. Guaranty Trust Company of New York was and is the agency for payment designated by the Debtor St. Louis Southwestern Railway Company, and said Debtor has never designated any office or agent in the United States other than the main office of Guaranty Trust Company of New York, in New York, pursuant to the provisions of the last paragraph of Section 1, Article 3, of the First Terminal and Unifying Mortgage, and Guaranty Trust Company of New York has and has had no branch office in Holland.

8. During the year 1912, the Debtor issued and sold in the State of New York, at a price of \$835 for each Bond in the principal dollar amount of \$1,000, plus accrued interest, its

First Terminal and Unifying Mortgage Bonds of a face amount (as expressed in American money) of \$8,155,000 to an original group of American purchasers, and payment therefor was received by the Debtor from said original group in money of the United States.

Prior to such issue and on March 25, 1912, the Debtor wrote to Guaranty Trust Company of New York a letter of which a copy is attached to the stipulation of facts as Exhibit B (Claimant's Exhibit 3). On March 28, 1912, Guaranty Trust Company wrote to the Debtor a letter of which a copy is attached to the stipulation of facts as Exhibit C (Claimant's Exhibit 4). Thereafter and for the purpose of the public offering of the bonds for sale the Debtor by its President wrote a letter to said group of purchasers which described said bonds and stated, among other things, that both principal and interest are payable at the office or agency of the Railway Company in the Borough of Manhattan in the City of New York, in gold coin of the United States of the present standard; coupon bonds are also payable, at the option of the holder, in London at 205 pds. 15s 2d. Sterling, or in Amsterdam at 2,490 guilders, or in Berlin at 4,200 marks, D. R. W., or in Paris at 5,180 francs, for each \$1,000.00 of principal, and at proportionate equivalents for installments of interest, and that such bonds were issued for the purpose of expenditures in this country by the Railway Company in stated amounts in money of the United States equal to the principal dollar amount of the bonds being issued; that additional bonds may be issued under said indenture for the purposes of expenditures for refunding prior mortgage bonds which aggregated in amount \$40,950,000, and for future expenditures for improvements, additions and betterments to the property of the Railway Company in this country for designated purposes, in a principal amount, as expressed in United States money, equal to the expenditures in such money as aforesaid. Said letter stated the mortgage debt of the Railway Company, including the indebtedness represented by the First Terminal and Unifying Mortgage Bonds, as a specified amount in United States money, and stated the annual interest charges on the said First Terminal and Unifying Mortgage Bonds as being a specified amount in United States money.

Thereafter the said group of purchasers prepared and used in the public offering and sale of said bonds their prospectus describing the same and repeating the matter and things above quoted from said letter of the Debtor by its President, including among other things the following:

"Principal and interest of all bonds payable in gold in New York, and of coupon bonds also payable in London at £205 15s 2d sterling, or in Amsterdam at 2,490 guilders, or in Berlin at 4,200 marks, D. R. W., or in Paris at 5,180 francs, for each \$1,000 of principal and at proportionate equivalents for installments of interest."

The Railway Company's said First Terminal and Unifying Bonds were issued to evidence the Debtor's liability for the repayment of sums of United States money borrowed; they were not issued upon a sale or purchase of guilders or other foreign money; the provisions contained in said bonds for optional payment in guilders or other foreign moneys were an assurance, in addition to the "gold clause" contained in the bonds, to the holders thereof against a depreciation in the value of the United States dollar; the amount of guilders mentioned in the bonds was at the time of the issuance of said bonds the equivalent of \$1,000 United States gold coin of the standard of weight and fineness as it existed on January 1, 1912, and it was understood, and specified in the indenture under which said bonds were issued, that the amounts of guilders, pounds, francs or marks mentioned in said bonds were each the equivalent of United States gold coin in said amount and of such standard of weight and fineness.

Of said \$8,155,000 face amount of Bonds, \$42,000 face amount have been acquired by the Debtor and are now held by it, and \$50,000 face amount formerly held by a certain annuity trust were returned to the Debtor and are now held by Chemical Bank & Trust Company of New York as Successor Trustee under the Debtor's General and Refunding Mortgage.

Said bonds have been listed on the New York Stock Exchange since 1915 and have been actively traded in thereon since that time, and none of such Bonds were on December 12, 1935, owned or is now owned by the parties referred to in this paragraph 8 of these findings.

9. F. H. Millard is Comptroller for the Trustee and is and has been Comptroller for the Debtor for seventeen years, and said F. H. Millard knows of no requests having been made to the Debtor or to its officers, for the payment of any of said interest coupons in guilders; and no payments of interest on said interest coupons were made in guilders prior to July 1, 1933. On June 5, 1933, no options for payment of said Bonds or interest coupons in other than money of the United States had been exercised by any bondholder resident in the United States.

10. \$13,483,000 aggregate principal amount of the Bonds authenticated since 1912 by Guaranty Trust Company of New York as Trustee as aforesaid were delivered by it to the Debtor within the State of New York, and thereafter in 1932 were delivered in said State by the Debtor, along with \$50,000 additional of the Bonds, being a total of \$13,533,000, to The Chase National Bank of the City of New York as Trustee under the Debtor's General and Refunding Mortgage dated as of July 1, 1930, and are now held by Chemical Bank & Trust Company as Successor Trustee under said General and Refunding Mortgage.

11. On July 1, 1935, 1,730 individuals or corporations held \$7,344,000 principal dollar amount of said Bonds, and said 1,730 holders were residents of the United States; 37 individuals or corporations held \$715,000 principal dollar amount of said Bonds, and said 37 holders were residents of countries other than the United States; and of said 37 holders, one, holding two bonds, was a resident of Belgium; four, holding a total of 19 bonds, were residents of Canada; one, holding one bond, was a resident of Czecho-slovakia; two, holding a total of seven bonds, were residents of England; four, holding a total of six bonds, were residents of France; three, holding a total of 27 bonds, were residents of Holland; one, holding two bonds, was a resident of Italy; one, holding 610 bonds, was a resident of Liechtenstein; one, holding one bond, was a resident of Newfoundland; one, holding five bonds, was a resident of Nicaragua; and eighteen, holding a total of 35 bonds, were residents of Switzerland. A separate claim has been filed on the 610 bonds which on July 1, 1935, were held by the person or corporation which was a resident of Liechtenstein. Four bonds, whose holders cannot be identified, held one bond each on July 1, 1935.

12. It is not now known by whom all of the Bonds are now held, except by reason of other proofs of claim which have been filed on certain of said Bonds in these proceedings, but a substantial amount of said coupon bonds which remain outstanding are and were on December 12, 1935, owned and held by citizens and residents of the United States or by domestic corporations incorporated under the laws thereof, or of the States thereof.

There is no evidence that Guaranty Trust Company of New York has filed its claim on behalf of any foreign resident holder.

13. On May 5, 1936, pursuant to the petition of the Debtor's Trustee, Guaranty Trust Company of New York, as Trustee under the First Terminal and Unifying Mortgage,

was enjoined by the United States District Court, Eastern Division, Eastern Judicial District of Missouri, from declaring to be due and payable immediately the principal of all the First Terminal and Unifying Mortgage Bonds. The Circuit Court of Appeals for the Eighth Circuit reversed and remanded the order of injunction of the District Court by order entered on November 13, 1936. The Supreme Court of the United States denied on February 15, 1937, petition of the Debtor's Trustee for a writ of certiorari. By order of this Court dated February 24, 1937, the aforesaid injunction was dissolved, and pursuant to said order the Claimant, on February 25, 1937, served a notice upon the Trustee and the Debtor reading as follows:

"St. Louis Southwestern Railway Company and Berryman Henwood, Esq., as Trustee of St. Louis Southwestern Railway Company, Debtor.

Dear Sirs:

Default having occurred under the provisions of the First Terminal and Unifying Mortgage Bonds of St. Louis Southwestern Railway Company (hereinafter sometimes called the Debtor) and of the Indenture dated January 1, 1912, under which said Bonds were issued, in that, *inter alia*, default was made in the payment of the installment of interest payable on said Bonds on January 1, 1936, which default has continued for the space of three months and upwards and still continues, and in that default was made in the payment of the installment of interest which matured on January 1, 1936, under the terms of the Second Mortgage of the Debtor dated February 12, 1891, which default still continues:

You Will Please Take Notice that the undersigned Trustee under the above Indenture hereby declares the principal of all of the Bonds outstanding under said Indenture due and payable immediately on May 5, 1936, this notice being effective as of that date pursuant to the election of the undersigned, hereby evidenced, under the order entered February 24, 1937, by the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri, In the Matter of St. Louis Southwestern Railway Company, Debtor, in proceedings for reorganization of a railroad No. 8497.

Dated, February 25, 1937.

GUARANTY TRUST COMPANY
OF NEW YORK,

As Trustee under the above Indenture
dated January 1, 1912.

By (S) Arthur E. Burke,
Corporate Trust Officer.

test:
deal)

3) F. J. McGoldrick.
Assistant Secretary."

14. Claimant's Exhibit 7 is a true copy of a notice, dated June 4, 1936, addressed by Guaranty Trust Company of New York, trustee, to holders of the Bonds, and such notice was published in four daily newspapers of general circulation in the United States on June 4, 1936; in a newspaper in London, England, on June 6, 1936; in a newspaper in Zurich, Switzerland, on June 8, 1936; and in a newspaper in Amsterdam, Holland, on June 9, 1936, all being of general circulation in said cities, respectively.

15. The proof of claim of Guaranty Trust Company of New York, made and executed on September 24, 1936, was filed herein on September 26, 1936.

16. All of the acts were done which are set forth in the certificate of the Bailiff at Amsterdam, Holland, which is attached to the proof of claim, and a true translation of which is attached as Exhibit A to the stipulation of facts (Claimant's Exhibit 2); the acts of the Claimant purporting to exercise option for payment of the said Bonds in guilders or the equivalent of said guilders in dollars consist of the things done as disclosed by the said certificate, and of the making and filing of its proof of claim in this proceeding and the supplement thereto; Claimant's Exhibit 5 consists of true copies of the title page and three pages of a book which is received in the courts in Holland as evidence of Dutch statutory laws; the three sheets received therewith are a translation of said title page and of Sections 143 and 176 of the Dutch Commercial Code; and the acts done as aforesaid were done by Claimant as Trustee of said indenture.

17. At the time when the said bonds were issued or sold and at all pertinent times the guilder was and is the monetary unit of Holland, and the Nederlandsche Bank was and entitled to act as its circulation bank.

During all of said time and up to the time of the hearing, the Nederlandsche Bank had the exclusive right to issue notes, and by Article I of the Law of July 18, 1904, S. 189, it provided that so long as the Nederlandsche Bank is entitled to act as circulation bank, its notes have the quality of legal tender and lawful money; and its notes now are legal tender, except as to payments to be made by the Nederlandsche Bank itself.

The following are articles of the Law of the Kingdom of The Netherlands, of May 28, 1901, S. 132, as amended by the Laws of December 31, 1906, S. 376, July 1, 1909, S. 252, October 31, 1912, S. 324, and November 27, 1919, S. 786.

Article 1.

The currency-unit of The Netherlands monetary system is the guilder.

The guilder is divided into one hundred cents.

Article 2.

The States' coins are:

A. with the quality of legal tender:

I. up to any amount:

a. in gold:

the ten guilders piece;
the five-guilders piece;

b. in silver:

the ryksdaalder or two and a half guilders;
the guilder;
half a guilder;

II. to a limited amount the following changes:

a. in silver:

the twenty-five cents piece;
the ten-cents piece;

b. in nickel:

the stuiver or the five-cents piece;

c. in bronze:

the two and a half-cents piece;
the cent;
half a cent.

B. without the quality of legal tender:
the gold dukaat.

Article 6.

The coins named in Article 2 have a degree of fineness, weight and diameter, with a margin allowable as regards the degree of fineness and weight above as well as below, which have been fixed as follows:

| Species of coin | Degree of fineness | | |
|-----------------|----------------------|----------------------------|--|
| | legal thousandths | margin thousandths | |
| Gold | (10 guilders | 900 | 1.5 |
| | (5 guilders | 900 | 1.5 |
| | (dukaat | 983 | 1.0 |
| Silver | (2½ guilders) | | |
| | (guilder) | 720 | 3.0 |
| | (½ guilder) | | |
| | (25 cents) | 640 | 4.0 |
| Nickel | (10 cents) | | |
| | 5 cents | (250 nickel (750 copper | 10 nickel) 10 copper) |
| Bronze | (2½ cents | 950 copper | 10 copper |
| | (cent | 40 tin | 5 tin |
| | (½ cent | 10 zinc | 5 zinc |
| Species of coin | Weight | | Diameter |
| | legal grammes | margin thousandths | milli- metres |
| Gold | (10 guilders | 6.720 | 22.5 |
| | (5 guilders | 3.360 | 18.0 |
| | (dukaat | 3.494 | 21.0 |
| Silver | (2½ guilders) | 25.000 | 38.0 |
| | (guilder) | 10.000 | 28.0 |
| | (½ guilder) | 5.000 | 22.0 |
| | (25 cents) | 3.575 | 19.0 |
| Nickel | (10 cents) | 1.400 | 15.0 |
| | 5 cents | 4.500 | Square with sides of 18 millimetres except round- ing off at cor- ners. |
| Bronze | (2½ cents | 4.00) one in | 23.5 |
| | (cent | 2.500) every | 19.0 |
| | (½ cent | 1.250) 100 coins | 14.0 |

The said articles were in full force and effect at the time when the said Bonds were issued or sold and at all pertinent times and are at present in full force and effect.

At all times pertinent here, the bearer of a note issued by the Nederlandsche Bank has not been entitled to claim either gold, or gold coins; all he was and is entitled to claim was and is that his notes should be exchanged by the bank for

other legal tender, and the Nederlandsche Bank was free to meet the payment of its notes in gold or silver according to its own choice. For a long period including some time prior to June 5, 1933, it has been the policy of the Nederlandsche Bank not to make payment of its notes in gold coins, and during such period it has not done so. Prior to September 27, 1936, the Nederlandsche Bank delivered gold for export whenever the exchanges on countries maintaining a market for gold reached gold export point, such deliveries for export being made to Dutch bankers and banks who undertook to furnish proof within a reasonable time that the gold had actually been delivered at the central bank of the country to which it was sent. Prior to said date exports of gold were so allowed to the United States of America. On and after September 27, 1936, by royal decree dated September 26, 1936, later confirmed by statute, Holland suspended the export of gold.

During the years 1912 and 1913, the value of the Dutch guilder in terms of the United States dollar was \$.4020. During the period from January 31, 1934, to September 27, 1936, the value of the Dutch guilder in terms of the United States dollar was \$.680567.

18. The parties have agreed that the exchange value of the guilder in terms of the dollar of the United States of America was, and is to be taken as, \$0.6778 on each of the following dates on which the following happened, to wit: the date on which Petition No. 1 was filed in these proceedings, and on which Order No. 1 was entered, *inter alia*; approving said petition as properly filed, *viz.*, December 12, 1935; the effective date of the declaration by Guaranty Trust Company of New York, as Trustee, as of which all of the Bonds were, pursuant to the indenture, declared immediately due and payable, *viz.*, May 5, 1936; the date on which demand and protest of nonpayment were made in Amsterdam, Holland, by or in behalf of Claimant, for the payment in guilders of the principal and interest of the Bonds for which proof of claim was filed as aforesaid, and on which Claimant had made and executed its proof of claim aforesaid, *viz.*, September 24, 1936, and the exchange value of the guilder on November 8, 1937, was \$0.5560.

Conclusions of Law.

The Court declares the law to be that:

1. The Joint Resolution of Congress of June 5, 1933 (hereinafter called the "Joint Resolution"), reaches and ap-

plies to every obligation payable in money of the United States, incurred before or after June 5, 1933, whether or not there is contained therein or made with respect thereto any provision which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby, and every obligation payable in money of the United States must be discharged upon payment, dollar for dollar, in any coin or currency of the United States which at the time of payment is legal tender for public and private debts.

2. The word "obligation," as used in the Joint Resolution, refers to a bond or coupon of the character therein defined, as a whole, rather than to particular "provisions" contained therein. The Supreme Court of the United States so construed the word "obligation" in *Norman v. Baltimore & Ohio Railroad*, 294 U. S. 240, 79 L. Ed. 885, and *Perry v. United States*, 294 U. S. 330, 79 L. Ed. 912.

3. The word "payable," as used in the Joint Resolution, and as applied to the Debtor's First Terminal and Unifying Mortgage Bonds, means "capable of being paid." The First Terminal and Unifying Mortgage Bonds of St. Louis Southwestern Railway Company issued under and pursuant to the Railway Company's First Terminal and Unifying Mortgage are required to be paid in United States dollars, reserving an option in the holders of the Bonds to elect to receive payment in guilders, francs, marks or pounds, and, even if the dollar payment be considered as an option equal only in rank to the option to receive payment in the foreign currencies, the Bonds are capable of being paid and the Debtor may be compelled to pay in money of the United States, and therefore they are "payable in money of the United States" within the meaning of the Joint Resolution.

4. The Joint Resolution deals with obligations payable in a specified amount of money of the United States which also contain provisions attempting to confer additional rights upon obligees, and the application of the Joint Resolution is not limited to obligations which can be paid only in money of the United States. Any contract which gives the obligee an unqualified right to receive money of the United States, even though such right requires the exercise of an option is within the scope of the Joint Resolution.

5. The Bonds on which said claim was filed were obligations payable in money of the United States on June 5, 1933, and therefore the Joint Resolution reaches and applies to said Bonds.

6. The option contained in the Bonds became inoperative on June 5, 1933, which was the effective date of the Joint Resolution, and the purported election (whether or not the Claimant, as Trustee, had the power to make an election) on a date subsequent to June 5, 1933, was and is wholly ineffective and without any force or effect. The said Bonds were on June 5, 1933, payable in money of the United States and the said Joint Resolution on that date directed that all obligations then so payable should be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts. This declaration of the public policy of the United States may not be avoided or defeated by a subsequent purported election to receive payment in a currency other than money of the United States.

7. Bonds of the character defined in the Joint Resolution must be discharged upon payment, dollar for dollar, in any coin or currency of the United States which at the time of payment is legal tender for public or private debts, and, the Debtor being in bankruptcy under amendatory Section 77 of the Bankruptcy Act and therefore being incapable of discharging said Bonds by payment of any kind, a claim on said Bonds must be allowed, dollar for dollar, in any coin or currency of the United States which at the time of allowance is legal tender for public and private debts.

8. Any presumption which may exist against extra-territorial construction of a statute does not preclude a country from enforcing its rule of public policy where resort is had to its courts to enforce the obligations of its citizens. No such presumption precludes the United States from enforcing the rule of public policy announced in the Joint Resolution and it is the duty of this Court to enforce said rule of public policy in these proceedings.

9. Under the authority of the decision of the Supreme Court of the United States in *Holyoke Water Power Company v. American Writing Paper Company*, 300 U. S. 324, 81 L. Ed. 383, the alternative forms of payment in the Bonds here involved shed light upon each other; the obligations require the payment of money and not the delivery of a commodity; what was intended by the issuance of the Bonds was to assure the payment of a money debt in United States dollars of a value as constant as that of gold or other currencies; the words used in the Bonds must be read in the setting of the whole transaction, and so read they show that the end in view was a repayment of United States money loaned and not a sale of guilders or any other currency or commodity;

and for these reasons and for the reasons set forth in the foregoing findings and in these conclusions, the Bonds are within the letter of the Joint Resolution and equally within its spirit.

10. The Dutch guilder is capable of being measured in gold, and the number of guilders mentioned in each bond was specified as the equivalent of United States gold coin of the standard of weight and fineness existing on January 1, 1912. Under the authority of the decision of the United States Supreme Court in the Holyoke case, *supra*, a contract for the payment of gold as the equivalent of money, and a *fortiori*, a contract for the payment of money measurable in gold, is within the letter of the Joint Resolution and equally within its spirit.

11. The decision of the United States Supreme Court in the Holyoke case, *supra*, placed an interpretation upon the Joint Resolution inconsistent with the interpretation placed thereon by the United States Circuit Court of Appeals for the Second Circuit in *Anglo-Continental Treuhand, A. G. v. St. Louis Southwestern Railway Company*, 81 Fed. (2d) 11, certiorari denied 80 L. Ed. 1381, and in any event this Court is not bound by the decision of said Circuit Court of Appeals in said case.

12. This Court is bound to follow the decision of the United States Supreme Court in the Holyoke case, *supra*, and said decision supports the conclusions here reached.

13. Guaranty Trust Company of New York, as Trustee, is entitled to an order allowing the claim on said Bonds, in the principal amount of \$21,638,000 in the currency of the United States which is presently legal tender for public and private debts, plus unpaid interest thereon to December 12, 1935, at the rate provided in said Bonds, said amount to be reduced to the extent that individual proofs of claim have been filed on behalf of said Bonds or interest coupons by the holders thereof, personally or by proxy.

The Court having determined to allow this claim in the amount and on the grounds stated above; it is unnecessary for this Court to determine the other issues in respect to the claim for allowance in an additional amount presented by the proof of claim and the protests against the same.

Order to be settled on notice.

CHARLES B. DAVIS,
District Judge.

Dated February 23, 1938.

Filed Feb. 23, 1938. Jas. J. O'Connor, Clerk.

(Petition for Appeal Filed in U. S. District Court.)

(Filed April 2, 1938.)

In the District Court of the United States, Eastern Division,
Eastern Judicial District of Missouri.

In the Matter of:

St. Louis Southwestern Railway Company, Debtor.

In Proceedings for Reorganization of a Railroad.

No. 8497.

Guaranty Trust Company of New York, as Trustee under St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage dated January 1, 1912, Appellant,

vs.

Berryman Henwood, Trustee of St. Louis Southwestern Railway Company, Debtor, St. Louis Southwestern Railway Company, and Southern Pacific Company, Appellees.

To the Honorable Charles B. Davis, Judge of the United States District Court:

Guaranty Trust Company of New York, as Trustee under St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage dated January 1, 1912, respectfully shows that on March 21, 1938, this Court entered its order in the above-entitled cause allowing in part and disallowing in part the proof of claim and supplement thereto of your petitioner; that protests against said proof of claim were filed by the above-entitled appellees; that your petitioner feels itself aggrieved by the said order and action of said Court and prays that it may be permitted to take an appeal from said order to the United States Circuit Court of Appeals for the Eighth Circuit, for the reasons specified in the Assignment of Errors which is filed herewith.

Your petitioner therefore prays that an order be made fixing the amount of security which your petitioner shall give and furnish upon such an appeal, and that upon giving such security an appeal be allowed to the United States Circuit Court of Appeals for the Eighth Circuit, and that citation be issued to all the above-entitled appellees, and that a transcript of the record, proceedings and papers upon which said

order was made, duly authenticated, be sent to the United States Circuit Court of Appeals for the Eighth Circuit.

Dated this 2nd day of April, 1938.

DAVIS, POLK, WARDWELL, GAR-DINER & REED,

THOMPSON, MITCHELL, THOMP-SON & YOUNG,

Attorneys for Petitioners, Guaranty Trust Company of New York, as Trustee under St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage dated January 1, 1912.

(Assignment of Errors on Appeal allowed by U. S. District Court.)

(Filed April 2, 1938.)

Comes now Guaranty Trust Company of New York as Trustee under St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage, dated January 1, 1912, and files the following assignment of errors upon which it will rely in the prosecution of the appeal herewith petitioned for in the above entitled cause from the order of this Court entered on the 21st day of March, 1938.

1. The Court erred in entering its order dated March 21, 1938, in allowing only \$1,000.00, plus interest, for each of the Debtor's First Terminal and Unifying Mortgage Bonds (hereinafter termed the "Bonds") allowed under said claim.
2. The Court erred in entering its order dated March 21, 1938, in failing to allow the sum of \$1,687.72, principal amount, plus \$37.739, being interest on said principal amount, at the rate of 5% per annum from July 1, 1935, to December 2, 1935, being the total amount of \$1,725.46 on each of the Bonds allowed under said claim.
3. The Court erred in entering its order dated March 21, 1938, in restricting the allowance on the Bonds allowed under said claim to the stated dollar amount of said Bonds, plus interest, instead of allowing an amount equal to the guilder exchange value of 67.78 cents on 2490 guilders principal amount of each Bond, plus interest on said amount at the rate of 5% per annum from July 1, 1935, to December 2, 1935.

4. The Court erred in entering its order dated March 21, 1938, in restricting the allowance on the Bonds allowed under said claim to the stated dollar amount of said Bonds, plus interest, instead of allowing an amount equal to the proper guilder exchange value on 2490 guilders principal amount of each Bond, plus interest on said amount at the rate of 5% per annum from July 1, 1935, to December 12, 1935.

5. The Court erred in entering its order dated March 21, 1938, in allowing said claim only on the basis of the dollar face value of said bonds and making no allowance on account of the option conferred by said Bonds to receive payment in guilders.

6. The Court erred in that part of its Finding of Fact number 8 reading as follows:

"The Railway Company's said First Terminal and Unifying Bonds were issued to evidence the Debtor's liability for the repayment of sums of United States money borrowed."

7. The Court erred in failing to find that the foreign currency clauses of the Debtor's Bonds constituted an optional medium of payment offered by the Debtor at the time of the original issue of said Bonds for the purpose and with the effect of inducing purchasers thereof to purchase the same.

8. The Court erred in failing to find that the foreign currency clauses in the Debtor's Bonds were part of the consideration moving from the Debtor for the price paid therefor by purchasers thereof.

9. The Court erred in failing to find that at the time of issuance of the Debtor's Bonds, the Debtor understood, contemplated and agreed that the duty and expense of obtaining foreign exchange, including guilder exchange, would be assumed and discharged by the Debtor upon any valid election by or on behalf of any holders of said Bonds to receive any foreign currency permitted by said option.

10. The Court erred in failing to find that upon and in connection with the execution and delivery of the Debtor's First Terminal and Unifying Mortgage and upon and in connection with the issuance and purchase of the Debtor's Bonds thereunder, the Debtor intended and agreed with or for the benefit of purchasers and holders of said Bonds that the foreign currency options stated in said Bonds, whether in guilders, marks, pounds or French francs, were and were

to be equal and interchangeable alternatives of the same rank with the promise therein to pay dollars.

11. The Court erred in failing to find that upon and in connection with the execution and delivery of the Debtor's First Terminal and Unifying Mortgage and upon and in connection with the issuance and purchase of the Debtor's Bonds thereunder, the Debtor intended and agreed with or for the benefit of purchasers and holders of said Bonds that the Debtor would, upon any valid election of the money of payment, pay the designated amounts in the respective currencies, whether in dollars, guilders, marks, pounds or French francs, as alternative promises of co-ordinate and equal rank in all respects.

12. The Court erred in failing to find that the Debtor's promise in its Bonds to pay United States dollars was and was intended to be a promise performable only on the valid exercise of the option contained in said Bonds and said Mortgage.

13. The Court erred in failing to find that at the time of issuance of the Bonds the Debtor intended and agreed with or for the benefit of purchasers or holders of said Bonds that at the maturity or upon any acceleration thereof the option of the medium of payment as among dollars, guilders, marks, pounds or francs should be exercised by, or on behalf of, the holders of said Bonds.

14. The Court erred in that part of its Finding of Fact number 8 reading as follows:

*** * the amount of guilders mentioned in the bonds was at the time of the issuance of said bonds the equivalent of \$1,000 United States gold coin of the standard of weight and fineness as it existed on January 1, 1912, and it was understood, and specified in the indenture under which said bonds were issued, that the amounts of guilders, pounds, francs or marks mentioned in said bonds were each the equivalent of United States gold coin in said amount and of such standard of weight and fineness."

15. The Court erred in failing to find as part of its Finding of Fact number 8 in lieu of the part thereof above quoted in the Assignment of Error numbered 14:

*** * the amount of guilders mentioned in the bonds was at the time of the issuance of said bonds the equivalent of \$1,000 United States gold coin of the standard of weight and fineness as it existed on January 1, 1912, and it was understood and specified in the Indenture under which said

bonds were issued, that the amounts of guilders, pounds, francs or marks mentioned in said bonds were each the equivalent of United States gold coin in said amount and of such standard of weight and fineness at the time of issuance in 1912, but not necessarily at any other time or at any time after the time of issuance in 1912."

16. The Court erred in failing to find that at the time of issuance of the Debtor's Bonds the Debtor understood and realized that after issuance thereof the foreign currencies mentioned in said Bonds might fluctuate on the exchange market by comparison with United States dollars.

17. The Court erred in failing to find that the Claimant's election to receive, and demand for, payment in guilders of the amount embraced within its proof of claim, was duly made on September 24, 1936.

18. The Court erred in its Conclusion of Law No. 1 in holding that the Joint Resolution of Congress of June 5, 1933 (hereinafter called the "Joint Resolution"), reaches and applies to every obligation payable in money of the United States, incurred before or after June 5, 1933, whether or not there is contained therein or made with respect thereto any provision which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby.

19. The Court erred in its Conclusion of Law No. 1 in holding that every obligation payable in money of the United States must be discharged upon payment, dollar for dollar, in any coin or currency of the United States which at the time of payment is legal tender for public and private debts.

20. The Court erred in failing to hold that the Joint Resolution of Congress of June 5, 1933, does not reach and apply to obligations which may be paid in money of the United States but may also be paid in some foreign currency if such foreign currency is validly elected as the medium of payment.

21. The Court erred in its Conclusion of Law No. 2 in holding that the word "obligation" in the Joint Resolution refers to a bond or coupon of a character therein defined, as a whole, rather than to particular "provisions" contained therein.

22. The Court erred in its Conclusion of Law No. 2 in holding that the Supreme Court of the United States in *Norman v. Baltimore & Ohio R. R.*, 294 U. S. 240, 79 L. Ed.

885, and Perry v. United States, 294 U. S. 330, 79 L. Ed. 912, construed the word "obligation" as referring to a bond or coupon of the character defined in the Joint Resolution, as a whole, rather than particular "provisions" contained therein.

23. The Court erred in its Conclusion of Law No. 3 in holding that the word "payable" as used in the Joint Resolution, and as applied to the Debtor's Bonds means "capable of being paid".

24. The Court erred in failing to hold that the word "payable", as used in the Joint Resolution, and as applied to the Debtor's Bonds, refers to obligatory payment rather than permissive payment.

25. The Court erred in its Conclusion of Law No. 3 in holding that the Bonds of St. Louis Southwestern Railway Company issued under and pursuant to the Railway Company's First Terminal and Unifying Mortgage are required to be paid in United States dollars, reserving an option to the holders of the Bonds to elect to receive payment in guilders, francs, marks or pounds.

26. The Court erred in its Conclusion of Law No. 3 in holding that even if the aforesaid promises to pay guilders, francs, marks, or pounds, be considered as alternative to, and of equal rank with, the aforesaid promise to pay dollars, the Bonds are capable of being paid and the Debtor may be compelled to pay in money of the United States, and therefore they are "payable in money of the United States" within the meaning of the Joint Resolution.

27. The Court erred in failing to hold that the Bonds are not primarily dollar obligations, and that the promises contained therein to pay guilders, francs, marks or pounds, are alternative to, and of an exactly equal rank with the promise contained therein to pay dollars.

28. The Court erred in its Conclusion of Law No. 4 in holding that the Joint Resolution deals with obligations payable in a specified amount of money of the United States which also contain provisions attempting to confer additional rights upon obligees and that the application of the Joint Resolution is not limited to obligations which can be paid only in money of the United States.

29. The Court erred in its Conclusion of Law No. 4 in holding that any contract which gives the obligee an unqualified right to receive money of the United States, even though such right requires the exercise of an option, is within the scope of the Joint Resolution.

30. The Court erred in failing to hold that any contract which gives the obligee the right to receive the money of the United States contingent on the exercise of an option which also affords the obligee the alternative right to receive money of a foreign nation, is not within the scope of the Joint Resolution.

31. The Court erred in failing to hold that the right to elect the currency which should be the medium of payment for the Bonds belonged to the Bondholders or to the Claimant acting on their behalf, and at no time passed to the Debtor.

32. The Court erred in its Conclusion of Law No. 5 in holding that the Bonds on which the said claim was filed were obligations payable in money of the United States on June 5, 1933, and therefore the Joint Resolution reaches and applies to said Bonds.

33. The Court erred in its Conclusion of Law No. 6 in holding that the option contained in the Bonds became inoperative on June 5, 1933, which was the effective date of the Joint Resolution, and that the purported election (whether or not the Claimant, as Trustee, had the power to make an election) on a date subsequent to June 5, 1933, was and is wholly ineffective and without any force or effect.

34. The Court erred in its Conclusion of Law No. 6 in holding that said Bonds were on June 5, 1933, payable in money of the United States and the said Joint Resolution on that date directed that all obligations then so payable should be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts.

35. The Court erred in failing to find that the election by Guaranty Trust Company as Trustee to receive payment in guilders was not contrary to the public policy of the United States as expressed in the Joint Resolution.

36. The Court erred in its Conclusion of Law No. 7 in holding that bonds of the character defined in the Joint Resolution must be discharged upon payment, dollar for dollar, in any coin or currency of the United States which at the time of payment is legal tender for public or private debts, and the Debtor being in bankruptcy under amendatory Section 77 of the Bankruptcy Act and therefore being incapable of discharging said Bonds by payment of any kind, a claim on said Bonds must be allowed, dollar for dollar, in any coin or currency of the United States which at the time of allowance is legal tender for public and private debts.

37. The Court erred in failing to hold that the Joint Resolution of Congress of June 5, 1933, declares to be against public policy only provisions in an obligation which purport to give the obligee a right to require payment in gold or a particular kind of coin or currency of the United States or an amount in money of the United States measured thereby.

38. The Court erred in failing to hold that a provision which purports to give the obligee a right to require payment in units of a specified foreign currency not money of the United States is valid and enforceable, even though contained in an obligation also containing provisions which purport to give the obligee an alternative right to require payment in money of the United States measured by gold.

39. The Court erred in holding in its Conclusion of Law No. 8 that the rule of public policy announced in the Joint Resolution is applicable to the Bonds herein.

40. The Court erred in its Conclusion of Law No. 9 in holding that under the authority of the Supreme Court of the United States in Holyoke Water Power Company vs. American Writing Paper Company, 300 U. S. 324, 81 L. Ed. 383, the alternative forms of payment in the Bonds here involved require the payment of money and not the delivery of a commodity.

41. The Court erred in its Conclusion of Law No. 9 in holding that what was intended by the issuance of the Bonds was to assure the payment of a money debt in United States dollars of a value as constant as that of gold or other currencies.

42. The Court erred in its Conclusion of Law No. 9 in holding that the words used in the Bonds show that the end in view was a repayment of United States money loaned and not a sale of guilders or any other currency or commodity.

43. The Court erred in its Conclusion of Law No. 9 in holding that the Bonds are within the letter of the Joint Resolution and equally within its spirit.

44. The Court erred in failing to hold that the guilder option contained in the Bonds, when validly exercised, became a straight contract to pay guilders.

45. The Court erred in failing to hold that the promise to pay guilders in Amsterdam, contained in the Bonds, is, in the eyes of the Court, a promise to deliver an ordinary commodity.

46. The Court erred in failing to hold that the Debtor's contract to pay guilders in Amsterdam, as set forth in its Bonds, was and is either a contract to deliver a commodity, or a contract to pay foreign money in a foreign country, and that such contract in either case is outside the scope of the Joint Resolution.

47. The Court erred in its Conclusion of Law No. 10 in holding that the number of guilders mentioned in each bond was specified as the equivalent of United States gold coin of the standard of weight and fineness existing on January 1, 1912, and that under the authority of the decision of the United States Supreme Court in Holyoke Water Power Company vs. American Writing Paper Company, 300 U. S. 324, a contract for the payment of gold as the equivalent of money, and a fortiori, a contract for the payment of money measureable in gold, is within the letter of the Joint Resolution and equally within its spirit.

48. The Court erred in its Conclusion of Law No. 11 in holding that the decision of the United States Supreme Court in Holyoke Water Company vs. American Writing Paper Company, 300 U. S. 324, 81 L. Ed. 383, places an interpretation upon the Joint Resolution inconsistent with the interpretation placed thereon by the United States Circuit Court of Appeals for the Second Circuit in Anglo-Continental Treuhand, A. G. vs. St. Louis Southwestern Railway Company, 81 F. (2d) 11, cert. denied 80 L. Ed. 1381.

49. The Court erred in failing to follow the decision of the United States Circuit Court of Appeals for the Second Circuit in Anglo-Continental Treuhand, A. G. vs. St. Louis Southwestern Railway Company, 81 F. (2d) 11, cert. denied 80 L. Ed. 1381.

50. The Court erred in holding in its Conclusion of Law No. 12 that it was bound in this case to follow the decision of the United States Supreme Court in Holyoke Water Power Company vs. American Writing Paper Company, 300 U. S. 324.

51. The Court erred in its Conclusion of Law No. 12 in holding that the decision of the United States Supreme Court in Holyoke Water Power Company vs. American Writing Paper Company, 300 U. S. 324, 81 L. Ed. 383, supports the conclusions reached by the Court herein.

52. The Court erred in failing to hold that the Joint Resolution does not apply to contracts to pay guilders in Holland.

Wherefore, your petitioner prays that the said order may be reversed and the proof of claim of your petitioner be allowed in full, and for such other and further relief as to the Court may seem just and proper.

Dated April 2, 1938.

GUARANTY TRUST COMPANY
OF NEW YORK,

As Trustee under St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage, dated January 1, 1912, Petitioner,

DAVIS, POLK, WARDWELL,

GARDINEK & REED,

By Thompson, Mitchell, Thompson & Young, Its Attorneys.

Order Allowing Appeal of Guaranty Trust Company of New York, as Trustee Under St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage, Dated January 1, 1912.

Filed April 2, 1938.

In the District Court of the United States, Eastern Division,
Eastern Judicial District of Missouri.

In the Matter of

St. Louis Southwestern Railway Company, Debtor.

In Proceedings for Reorganization of a Railroad.

No. 8497.

Guaranty Trust Company of New York, as Trustee under St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage dated January 1, 1912, Appellant,

vs.

Berryman Henwood, Trustee of St. Louis Southwestern Railway Company, Debtor, St. Louis Southwestern Railway Company, and Southern Pacific Company, Appellees.

The petition of Guaranty Trust Company of New York, as Trustee under St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage dated January 1, 1912, for an appeal from the order of this Court dated March 21, 1938, allowing in part and disallowing in part the proof of

claim and the supplement thereto of said petitioner is hereby granted and an appeal to the United States Circuit Court of Appeals for the Eighth Circuit is hereby allowed.

It is Further Ordered, that the bond on appeal be fixed in the sum of Five Hundred Dollars (\$500.00) and that the Clerk of this Court shall make and transmit to said Circuit Court of Appeals under his seal and the seal of this Court, a true copy of the material parts of the record herein which shall be designated by praecipe or stipulation of the parties or of their counsel; and that citation be issued to the above entitled appellees.

Dated this 2 day of April, 1938.

CHARLES B. DAVIS,
District Judge.

(Bond on Appeal allowed by U. S. District Court.)

Filed April 2, 1938.

Know All Men By These Presents, That we, Guaranty Trust Company of New York, a corporation, as principal and United States Fidelity And Guaranty Company, a corporation, as surety, are held and firmly bound unto Berryman Henwood, Trustee of St. Louis Southwestern Railway Company, Debtor, St. Louis Southwestern Railway Company and Southern Pacific Company in the sum of Five Hundred Dollars (\$500.00) to be paid to the said Obligees to which payment well and truly to be made we bind ourselves and our successors, jointly and severally, by these presents.

The condition of this obligation is that:

Whereas, Guaranty Trust Company of New York, as Trustee under St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage dated January 1, 1912, has filed its petition praying for the allowance of an appeal to the United States Circuit Court of Appeals for the Eighth Circuit from the order entered in the above-entitled cause on March 21, 1938, allowing in part and disallowing in part the proof of claim and the supplement thereto of said Guaranty Trust Company of New York, as such trustee; and

Whereas, said appeal has been allowed by the Honorable Charles B. Davis, Judge of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri;

Now, Therefore, if said Guaranty Trust Company of New York, the said appellant, shall prosecute its appeal to effect,

and if it shall fail to make its appeal good, shall answer all costs, then this obligation shall be void, otherwise to remain in full force and effect.

Dated March 28, 1938.

GUARANTY TRUST COMPANY OF
NEW YORK,
By Kingsley Kunhardt,
Vice-President, Principal.

Attest:

(Seal) W. W. Merker,
Assistant Secretary.

UNITED STATES FIDELITY AND
GUARANTY COMPANY,
By S. Frank Hedges,
Attorney-in-Fact, Surety.

Attest:

C. B. Bradbury,
Attorney-in-fact.

The within appeal Bond is hereby approved both as to form and the sufficiency of the surety thereon, this 2 day of April, 1938.

CHARLES B. DAVIS,
District Judge.

Countersigned

Joseph A. Luty,
Resident Missouri Agent.

Affidavit, Acknowledgment and Justification
By the United States Fidelity and Guaranty Company.

State of New York,

County of New York—ss.:

Before me personally came S. Frank Hedges, known to me to be Attorney-in-fact of the United States Fidelity And Guaranty Company, the corporation described in and which executed the annexed bond of Guaranty Trust Company Of New York as surety thereon, who being by me duly sworn, deposes and says that he resides in the City of New York, State of New York, and that he is the Attorney-in-fact of the said United States Fidelity And Guaranty Company, and knows the corporate seal thereof; that said Company is duly and legally incorporated under the laws of the State of Maryland; that said Company has complied with the provisions of the Act of Congress of August 13, 1894, allowing certain corporations to be accepted as surety on bonds; that the seal affixed to the annexed bond of Guaranty Trust Company Of New York is the corporate seal of the said United States Fidel-

ity And Guaranty Company, and was thereto affixed by order and authority of the Board of Directors of said Company; and that he signed his name thereto by like authority as Attorney-in-fact of said Company and that he is acquainted with C. B. Bradbury and knows him to be Attorney-in-fact of said Company; and that the signature of said C. B. Bradbury subscribed to said bond is the genuine handwriting of said C. B. Bradbury and was thereto subscribed by order and authority of said Board of Directors, and in the presence of said deponent; and that the assets of said Company, item-numbered and liable to execution, exceed its claims, debts and liabilities, of every nature whatsoever, by more than the sum of two million dollars (\$2,000,000.00).

S. FRANK HEDGES.

Sworn to, acknowledged before me, and subscribed in my presence this 28th day of March, 1938.

(Seal)

FRANCES H. HALLY.

Notary Public, King County Clerk's No. 409, Register's No. 9102.

Certificate filed in the following counties; New York Clerk's No. 511, Register's No. 9H359, Bronx Clerk's No. 43, Register's No. 138H39, Queen's Clerk's No. 1304, Register's No. 5376, Richmond County Clerk and Register, Westchester County Clerk and Register.

Term Expires March 30, 1939.

(Seal)

Stipulation as to the Evidence.

(Filed April 15, 1938.)

In the District Court of the United States, Eastern Division,
Eastern Judicial District of Missouri.

In the Matter of:

St. Louis Southwestern Railway Company, Debtor.

In Proceedings for Reorganization of a Railroad.

No. 8497.

Guaranty Trust Company of New York, as Trustee,
Appellant,

vs.

Berryman Henwood, Trustee of St. Louis Southwestern Railway Company, Debtor, St. Louis Southwestern Railway Company, and Southern Pacific Company, Appellees.

It is hereby stipulated between Guaranty Trust Company of New York, as Trustee under St. Louis Southwestern Rail-

way Company First Terminal and Unifying Mortgage dated January 1, 1912, Appellant (hereinafter referred to as the "Claimant"), and Berryman Henwood, Trustee of St. Louis Southwestern Railway Company, Debtor, St. Louis Southwestern Railway Company, and Southern Pacific Company, Appellees, that the proof of claim of said Claimant, and the protests thereto, came on for hearing on the 26th day of November, 1937, (being the first of the claims filed in this proceeding to be tried) in the District Court of the United States for the Eastern Judicial District of Missouri, Eastern Division, before the Honorable Charles B. Davis, one of the Judges thereof, and at said trial the following evidence, and none other, was offered and received in evidence; that except where objections are specifically set forth hereinbelow all of said evidence was offered and received without objection; that where only portions of exhibits are hereinafter set forth, it is hereby stipulated that the omitted portions are not material to any of the issues raised in the said proof of claim or the respective protests thereto.

Wherever the words "caption omitted" appear, it is understood the said omitted caption is the caption of the above entitled proceeding number 8497.

Claimant's Evidence.

1. Stipulation dated November 8, 1937, being as follows (caption omitted):

Stipulation in Respect to Proof of Claim of Guaranty Trust Company of New York as Trustee Under Debtor's First Terminal and Unifying Mortgage.

It Is Hereby Stipulated between Guaranty Trust Company of New York as Trustee under St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage dated January 1, 1912 (hereinafter sometimes called "Claimant"), and the Protestants, Berryman Henwood, Trustee, St. Louis Southwestern Railway Company, Debtor; St. Louis Southwestern Railway Company (hereinafter called "Debtor"); and Southern Pacific Company, that for the purpose only of the trial of the issues presented by the proof of claim of Guaranty Trust Company of New York as Trustee as aforesaid, numbered 251, verified September 24, 1936, and filed herein, and the Supplement thereto verified March 12, 1937, and filed herein, and the various protests thereto and for the purpose of any appeal or appeals from the determination thereon, without prejudice, however, to the rights of any holder of the Bonds herein described who may take due proceedings to present to the Court any other claim or contentions with respect to the subject matter of this stipulation,

a competent witness or witnesses would testify as follows, subject to objections by any party as to relevance or materiality which are hereby reserved.

1. Guaranty Trust Company of New York is a corporation incorporated under the laws of the State of New York, and carrying on business at No. 140 Broadway, in the Borough of Manhattan, City, County and State of New York.

2. The above named Debtor, St. Louis Southwestern Railway Company, is a Missouri corporation, authorized to do business as a common carrier by railroad in said State and in the States of Illinois, Arkansas, Tennessee and Louisiana.

3. Said Debtor, on December 12, 1935, filed a petition for reorganization under amendatory Section 77 of the Bankruptcy Act. In and by an order of this Court dated December 12, 1935, the petition of said Debtor was approved as properly filed under said amendatory Section 77. Subsequent thereto, this Court appointed Berryman Henwood as Trustee of the property of said Debtor, who thereafter duly qualified and is now acting as such Trustee. Southern Pacific Company is a corporation incorporated under the laws of the State of Kentucky.

4. The Debtor, shortly prior to April 24, 1912, pursuant to corporate action, authorized the creation of an issue of bonds to be known as its First Terminal and Unifying Mortgage Bonds (hereinafter sometimes called the "Bonds"), to be limited in aggregate principal amount as specified in, to be issued in manner and form as provided by, and to be secured by, an indenture of mortgage on the property of the Debtor therein described. In order to secure the payment of the principal and interest of all the bonds issued and to be issued under said indenture according to their tenor and effect, and to secure the performance of all the covenants and conditions in said indenture contained, the Debtor, on or about April 24, 1912, in the United States of America, pursuant to corporate action, made and executed under its corporate seal, and delivered to Guaranty Trust Company of New York and Walker Hill, an individual citizen of the State of Missouri, as Trustees, an indenture of mortgage (herein sometimes called the "indenture"), dated January 1, 1912, a true copy of which is annexed to the proof of claim and marked Schedule A. Guaranty Trust Company of New York and Walker Hill in the United States of America duly accepted the trusts created by the mortgage and united in the execution thereof to evidence such acceptance. Walker Hill having died, Frank C. Rand, an individual citizen of the State of Missouri, was appointed and became Successor

Trustee to Walker Hill, on or about September 25, 1925, and till continues as such.

5. The following bonds were authenticated by Guaranty Trust Company of New York as Trustee under the indenture, and were by it delivered to or on the order of the Debtor, and are now held by various persons other than the Debtor, except as hereinbelow in this paragraph otherwise stated:

(1) 8,105 Bonds in the form of coupon bonds, in the form set out beginning on page 3 of the indenture (42 of which are held by the Debtor);

(2) Temporary Bonds of various denominations in the aggregate principal amount of \$3,425,000, payable to bearer, issued pursuant to Section 5 of Article First of the indenture, in the form attached to the proof of claim as Schedule B;

(3) One registered bond in the principal amount of \$10,08,000, in the form beginning on page 7 of the indenture which at the request of the Debtor has been issued in exchange for coupon bonds of a like principal amount.

6. Payments of the installments of interest payable on such Bonds on January 1, 1936, and thereafter were not and have not been made, and payments of the installments of interest payable on January 1, 1936, and thereafter, under the terms of the second mortgage of the Debtor dated February 12, 1891, were not and have not been made.

7. The Debtor has never maintained an office or agency in Amsterdam, Holland, for the payment of interest or principal on said Bonds. In reply to an inquiry of the Committee on Stock List of the New York Stock Exchange regarding payment in foreign moneys in respect of the Bonds, the Debtor, in January, 1934, notified said Exchange that the company had no foreign paying agent, and had not provided funds for the payment of coupons pertaining to the Bonds in any currency other than that of the United States; and on or about January 13, 1934, the office of the Secretary of the New York Stock Exchange published its Bulletin containing statement to that effect.

8. It is admitted that all the acts were done which are set forth in the certificate of the Bailiff at Amsterdam, Holland, which is attached to the proof of claim, and a true translation of which is attached as Exhibit A hereto; that the acts of the Claimant purporting to exercise option for payment of the said Bonds in guilders or the equivalent of said guilders in dollars consist of the things done as disclosed by the said certificate, Exhibit A hereto, and of the making and filing of

its proof of claim in this proceeding and the supplement thereto.

9. The acts done as aforesaid were done by Claimant as Trustee of the said indenture. The Claimant reserves the right to show upon the trial that at the time when Claimant did the acts mentioned in paragraph 8 hereof and filed its said proof of claim for guilders, the Claimant had been expressly authorized so to do by certain bondholders by written instruments and powers.

10. During the year 1912 the Debtor issued and sold, in the State of New York, for slightly less than the dollar face amount thereof, plus accrued interest, its First Terminal and Unifying Mortgage Bonds of a face amount (as expressed in American money) of \$8,155,000 to an original group of American purchasers, and payment therefor was received by the Debtor from said original group in money of the United States.

Prior to such issue and on March 25, 1912, the Debtor wrote to Guaranty Trust Company of New York a letter of which a copy is attached hereto as Exhibit B. On March 28, 1912, Guaranty Trust Company wrote to the Debtor a letter of which a copy is attached hereto as Exhibit C. Thereafter and for the purpose of the public offering of the bonds for sale the Debtor by its President wrote a letter to said group of purchasers which described said bonds and stated among other things:

“Referring to your purchase of \$7,500,000.00 First Terminal and Unifying Mortgage 5% Gold Bonds of St. Louis Southwestern Railway Company, I beg to advise you as follows:

These bonds are the total amount outstanding of an authorized issue of \$100,000,000.00, dated Jan. 1, 1912, maturing Jan. 1, 1952, and bearing interest at the rate of 5% per annum, payable semi-annually on January 1st and July 1st in each year, in denominations of \$1,000.00 for coupon bonds and of \$1,000.00 and multiples thereof for fully registered bonds. The coupon bonds may be registered as to principal and may be exchanged for fully registered bonds; and registered bonds may be exchanged for coupon bonds. Both principal and interest are payable at the office or agency of the railway company in the Borough of Manhattan in the City of New York, in gold coin of the United States of the present standard; coupon bonds are also payable, at the option of the holder, in London at 205 pds. 15s 2d Sterling, or in Amsterdam at 2,490 guilders, or in Berlin at 4,200 marks. D. R. W.,

or in Paris at 5,180 francs, for each \$1,000.00 of principal, and at proportionate equivalents for installments of interest. The bonds are secured by a mortgage and Deed of Trust from St. Louis Southwestern Railway Company to Guaranty Trust Company of New York and Walker Hill, Esq., of St. Louis, as Trustees.

Issue of Bonds:

The bonds, which you have purchased, are issued for the following purposes:

| | |
|--|------------------------|
| To acquire new terminal properties in St. Louis, Mo., and Fort Worth, Texas, at cost; title to be taken in the Trustees, | \$ 2,250,000.00 |
| To retire outstanding equipment obligations of an equal face value | 2,165,000.00 |
| To acquire \$400,000.00 face value of First Refunding & Extension Mortgage Bonds of Gray's Point Terminal Ry. Co., being the total amount of the issue outstanding, to be deposited with the Corporate Trustee | 400,000.00 |
| To reimburse the Company for expenditures for permanent betterments and improvements already made out of its revenues and chargeable to capital account | 2,685,000.00 |
| Total | \$ 7,500,000.00 |

Additional bonds may be issued:

(1) To refund, purchase or acquire prior mortgage bonds of a like face amount (being all the bonds of the system maturing during the life of this issue, except bonds pledged under this mortgage) as follows:

| | |
|--|-----------------|
| a) St. Louis Southwestern Ry. Co. 1st Consol. 4s, due 1932 | \$25,000,000.00 |
| b) Bonds of Controlled Companies | 15,950,000.00 |

| | |
|------------------------|------------------------|
| Total | \$40,950,000.00 |
|------------------------|------------------------|

(2) The remainder, \$51,550,000.00 at par for the cost of:

(a) Additions and permanent betterments, additional main track or double track, passenger and freight stations,

etc., and all of the stocks and bonds of any company owning railway, terminal or warehouse property, to an amount not to exceed \$2,000,000.00 per annum cumulative during the years 1912 to 1921, inclusive, and \$3,000,000.00 per annum cumulative thereafter (certain bonds to be issued under 1(b) above, included in these limitations).

(b) New equipment on which these bonds shall be a direct first lien, to an amount not to exceed \$800,000.00 during the year 1912 and \$500,000.00 per annum cumulative thereafter.

(c) The acquisition or construction of additional lines of railway on which these bonds shall be a direct first lien or first collateral lien.

Prior mortgages are at present outstanding at the rate of about \$32,400.00 per mile, exclusive of trackage-right mileage, making a total mortgage debt on the property, with bonds of this issue now offered, including those issued for acquisition of terminal properties, of about \$37,275.00 per mile.

The annual interest on the bonds of this issue now offered will amount to \$375,000.00, while the interest on equipment notes to be refunded amounts to over \$100,000.00 leaving a net increase in interest of less than \$275,000.00 per annum. The earnings of the Company as appearing above, therefore, show that this additional interest charge on the average figures for the last ten years, has been earned over two and one-half times; for the year ended June 30th, 1911, about four and one-half times; and for the nine months ended March 31st last, over seven and one-half times."

Thereafter the said group of purchasers prepared and used in the public offering and sale of said bonds their prospectus describing the same and repeating the matters and things above quoted from said letter of the Debtor by its President, including among other things the following:

"Principal and interest of all bonds payable in gold in New York, and of coupon bonds also payable in London at £205 15s. 2d sterling, or in Amsterdam at 2,490 guilders, or in Berlin at 4,200 marks, D. R. W., or in Paris at 5,180 francs, for each \$1,000 of principal and at proportionate equivalents for installments of interest."

Of said \$8,155,000 face amount of Bonds, \$42,000 face amount have been acquired by the Debtor and are now held by it, and \$50,000 face amount formerly held by a certain an-

nuity trust were returned to the debtor and are now held by Chemical Bank & Trust Company of New York as Successor Trustee under the Debtor's General and Refunding Mortgage.

11. \$13,483,000 aggregate principal amount of the Bonds authenticated since 1912 by Guaranty Trust Company of New York as Trustee as aforesaid were delivered by it to the Debtor within the State of New York, and thereafter in 1932 were delivered in said State by the Debtor, along with \$50,000 additional of the Bonds, being a total of \$13,533,000, to The Chase National Bank of the City of New York as Trustee under the Debtor's General and Refunding Mortgage dated as of July 1, 1930, and are now held by Chemical Bank and Trust Company as Successor Trustee under said General and Refunding Mortgage.

12. Subsequent to the execution and delivery of the indenture and in accordance with the provisions thereof, the Debtor pledged and delivered to the Claimant as Trustee, other securities not specifically described in the indenture.

13. A substantial amount of said coupon bonds which remain outstanding are and were on December 12, 1935, owned and held by citizens and residents of the United States or by domestic corporations incorporated under the laws thereof, or of the States thereof.

14. On May 5, 1936, pursuant to the petition of the Debtor's Trustee, Guaranty Trust Company of New York, as Trustee under the First Terminal and Unifying Mortgage, was enjoined by the United States District Court, Eastern Division, Eastern Judicial District of Missouri, from declaring to be due and payable immediately the principal of all the First Terminal and Unifying Mortgage Bonds. The Circuit Court of Appeals for the Eighth Circuit reversed and remanded the order of injunction of the District Court by order entered on November 13, 1936. The Supreme Court of the United States denied on February 15, 1937, petition of the Debtor's Trustee for a writ of certiorari. By order of this Court dated February 24, 1937, the aforesaid injunction was dissolved, and pursuant to said order the Claimant, on February 25, 1937, served a notice upon the Trustee and the Debtor reading as follows:

St. Louis Southwestern Railway Company and Berryman Henwood, Esq., as Trustee of St. Louis Southwestern Railway Company, Debtor.

Dear Sirs:

Default having occurred under the provisions of the First Terminal and Unifying Mortgage Bonds of St. Louis South-

western Railway Company (hereinafter sometimes called the Debtor) and of the Indenture dated January 1, 1912, under which said Bonds were issued, in that, *inter alia*, default was made in the payment of the installment of interest payable on said Bonds on January 1, 1936, which default has continued for the space of three months and upwards and still continues, and in that default was made in the payment of the installment of interest which matured on January 1, 1936, under the terms of the Second Mortgage of the Debtor dated February 12, 1891, which default still continues:

You Will Please Take Notice that the undersigned Trustee under the above Indenture hereby declares the principal of all of the Bonds outstanding under said Indenture due and payable immediately on May 5, 1936, this notice being effective as of that date pursuant to the election of the undersigned, hereby evidenced, under the order entered February 24, 1937, by the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri, In the Matter of St. Louis Southwestern Railway Company, Debtor, in proceedings for reorganization of a railroad No. 8497.

Dated, February 25, 1937.

GUARANTY TRUST COMPANY
OF NEW YORK,

As Trustee under the above Indenture dated January 1, 1912.

By (S.) Arthur E. Burke,
Corporate Trust Officer.

Attest:

(Seal)

(S.) F. J. McGoldrick,
Assistant Secretary."

15. The exchange value of the guilder in terms of the dollar of the United States of America was, and is to be taken as, \$.6778 on each of the following dates on which the following happened, to wit: the date on which the initial petition (Petition No. 1) was filed in this proceeding, and on which Order No. 1 was entered *inter alia* approving said petition as properly filed, *viz.*, December 12, 1935; the effective date of the declaration by Guaranty Trust Company of New York, as Trustee, as of which all of the Bonds were, pursuant to the indenture, declared immediately due and payable, *viz.*, May 5, 1936; the date on which demand and protest of nonpayment were made in Amsterdam, Hol-

and, by or in behalf of Claimant, for the payment in guilders of the principal and interest, of the Bonds for which proof of claim was filed as aforesaid, and on which Claimant had made and executed its proof of claim aforesaid, viz., September 24, 1936.

The exchange value of the guilder at the date of this stipulation is \$0.5560.

16. At the time when the said bonds were issued or sold and at all pertinent times the guilder was and is the monetary unit of Holland, and the Nederlandsche Bank was and entitled to act as its circulation bank.

During all of said time and up to the present time, the Nederlandsche Bank had the exclusive right to issue notes, and by Article I of the Law of July 18, 1904, S. 189, it is provided that so long as the Nederlandsche Bank is entitled to act as circulation bank, its notes have the quality of legal tender and lawful money; and its notes now are legal tender, except as to payments to be made by the Nederlandsche Bank itself.

The following are articles of the Law of the Kingdom of the Netherlands, of May 28, 1901, S. 132, as amended by the Laws of December 31, 1906, S. 376, July 1, 1909, S. 252, October 31, 1912, S. 324, and November 27, 1919, S. 786.

Article 1.

The currency-unit of The Netherlands monetary system is the guilder.

The guilder is divided into one hundred cents.

Article 2.

The State's coins are:

A. with the quality of legal tender:

I. up to any amount:

a. in gold:

the ten-guilders piece;
the five-guilders piece;

b. in silver;

the ryksdaalder or two and a half guilders;
the guilder;
half a guilder;

II. to a limited amount the following changes:

a. in silver:

the twenty-five cents piece;
the ten-cents piece;

b. in nickel:

the stuiver or the five-cents piece;

c. in bronze:

the two and a half-cents piece;
the cent;
half a cent.

B. without the quality of legal tender:

the gold dukaat.

Article 6.

The coins named in Article 2 have a degree of fineness, weight and diameter, with a margin allowable as regards the degree of fineness and weight, above as well as below, which have been fixed as follows:

| Species of coin | | Degree of fineness legal thousandths | margin thousandths |
|-----------------|---------------|--|---------------------------|
| Gold | (10 guilders | 900 | 1.5 |
| | (5 guilders | 900 | 1.5 |
| | (dukaat | 983 | 1.0 |
| Silver | (2½ guilders) | | |
| | (guilder) | 720 | 3.0 |
| | (½ guilder) | | |
| | (25 cents) | 640 | 4.0 |
| Nickel | (10 cents) | | |
| | 5 cents | (250 nickel (750 copper | 10 nickel) 10 copper) |
| Bronze | (2½ cents | 950 copper | 10 copper |
| | (cent | 40 tin | 5 tin |
| | (½ cent | 10 zinc | 5 zinc |

| Species of coin | | Weight legal grammes | Weight margin thousandths | Diameter milli- metres |
|-----------------|---------------|----------------------------|--|------------------------------|
| Gold | (10 guilders | 6.720 | 2 | 22.5 |
| | (5 guilders | 3.360 | 2.5 | 18.0 |
| | (dukaat | 3.494 | 2 | 21.0 |
| Silver | (2½ guilders) | 25.000 | 4 | 38.0 |
| | (guilder) | 10.000 | 5 | 28.0 |
| | (½ guilder) | 5.000 | 6 | 22.0 |
| | (25 cents) | 3.575 | 10 | 19.0 |
| | (10 cents) | 1.400 | 15 | 15.0 |
| Nickel | 5 cents | 4.500 | Square with sides of 18 millimetres except round- ing off at cor- ners. | |
| Bronze | (2½ cents | 4.00 | one in | 23.5 |
| | (cent | 2.500 | every | 19.0 |
| | (½ cent | 1.250 | 100 coins | 14.0 |

The said articles were in full force and effect at the time when the said bonds were issued or sold and at all pertinent times and are at present in full force and effect.

At all times pertinent here, the bearer of a note issued by the Nederlandsche Bank has not been entitled to claim either gold, or gold coins; all he was and is entitled to claim was and is that his notes should be exchanged by the bank for other legal tender, and the Nederlandsche Bank was free to meet the payment of its notes in gold or silver according to its own choice. For a long period including some time prior to June 5, 1933, it has been the policy of the Nederlandsche Bank not to make payment of its notes in gold coins, and during such period it has not done so. Prior to September 27, 1936, the Nederlandsche Bank delivered gold for export whenever the exchanges on countries maintaining a market for gold reached gold export point, such deliveries for export being made to Dutch bankers and banks who undertook to furnish proof within a reasonable time that the gold had actually been delivered at the central bank of the country to which it was sent. Prior to said date exports of gold were so allowed to the United States of America. On and after September 27, 1936, by royal décreté dated September 26, 1936, later confirmed by statute, Holland suspended the export of gold.

During the years 1912 and 1913, the value of the Dutch guilder in terms of the United States dollar was \$.4020. During the period from January 31, 1934, to September 27, 1936, the value of the Dutch guilder in terms of the United States dollar was \$.680567.

17. The Protestant, Southern Pacific Company, is a holder of stock of the Debtor and of a note of the Debtor in the principal amount of \$17,882,250. As partial security for said note Southern Pacific Company holds \$23,903,000 principal amount of the Debtor's General & Refunding Mortgage Five Per Cent. Gold Bonds. Said Bonds contain the promise of the Debtor to pay the holders thereof the face amount thereof, together with interest thereon, in gold coin of the United States of America of or equal to the standard of weight and fineness as it existed on the first day of July, 1930. Other bonds issued under other indentures of the Debtor contain provisions for payment in gold coin of the United States of the standard of weight and fineness prevailing at the time of issuance of such bonds, but no bonds of the Debtor other than the First Terminal and Unifying Mortgage Bonds contain a provision for alternative payment in a fixed amount of foreign moneys.

18. It is stipulated and consented that any petition, order or paper filed in the above entitled proceeding which any party hereto may desire to incorporate in the record upon the issues aforesaid, shall become a part of the record for any and all purposes, subject to the ruling of the Court upon objection of any party as to materiality or relevance.

19. The trial of the issues between the claimant, Guaranty Trust Company of New York, and the Protestants, pursuant to this stipulation, shall exclude all issues relative to the claims of those First Terminal and Unifying Bondholders (Trustees or otherwise) who have filed separate proofs of claim in this proceeding. It is agreed that the issues raised by such separate proofs of claim and the protests thereto shall be determined in trials in respect to said separate proofs of claim, provided that in case any of such proofs of claim shall be disallowed on the ground that they have not been properly or validly filed, or shall not be allowed to the full extent to which such claims would be allowed under the proof of claim and supplement thereto of Guaranty Trust Company of New York, the rights of the bondholders filing such improper or invalid claims may be determined in subsequent hearing or hearings in respect to

the proof of claim, and supplement thereto, of Guaranty Trust Company of New York.

Dated this 8th day of November, 1937.

GUARANTY TRUST COMPANY OF
NEW YORK, as Trustee as aforesaid,

By Davis, Polk, Wardwell, Gardiner & Reed,

Its Attorneys.

BERRYMAN HENWOOD, Trustee,
St. Louis Southwestern Railway
Company, Debtor,

By A. H. Kiskaddon, Carleton S.
Hadley,

His Attorneys.

ST. LOUIS SOUTHWESTERN
RAILWAY COMPANY,

By A. H. Kiskaddon, Carleton S.
Hadley,

Its Attorneys.

SOUTHERN PACIFIC COMPANY,

By Ben C. Dey, George L. Bûland,

Its Attorneys.

Exhibit A.

Impressed
Revenue Stamp
50 Cents.

This day, the twenty-fourth of September in the year nineteen hundred and thirty-six at the request of the Guaranty Trust Co. of New York, established at No. 140 Broadway, New York City, U. S. A., incorporated under the laws of the State of New York, acting in this instance in its capacity of trustee under an Indenture of Mortgage dated January 1st, 1912, and signed by the St. Louis South-Western Railway Company, incorporated under the laws of the State of Missouri, United States of America, under which Indenture have been issued bonds designated First Terminal and Unifying Mortgage Bonds, copy of which with the coupons appertaining thereto is reproduced hereby, upon which bonds there is now outstanding and unpaid principal to the extent of \$21,638,000—each of such bonds being according to its terms payable (or exchangeable for a bond that is so payable) upon election as is provided therein and in the Inden-

ture aforesaid either in New York with an amount of \$1000—gold coin of the United States of America of or equal to the standard of weight and fineness as existed on January 1st, 1912, as principal or in Amsterdam with an amount of f2490—as principal, whilst each of the aforesaid bonds yields an interest of five per cent. per annum, and each of the half-yearly interest coupons appertaining to the aforesaid bonds is payable either in New York with an amount of \$25—or in Amsterdam with an amount of f62.25;

requester, the Guaranty Trust Company of New York, representing in the said capacity the holders of the aforesaid bonds and exercising its rights arising from the said bonds and the said Indenture;

I, Nicolaas Wagenaar, bailiff, accompanied by Hendrikus Franciscus Bels, residing at Nieuwer-Amstel, and Bonifacius Minevitus Wagenaar, residing at Amsterdam, as witnesses, have made an appearance at the General Post Office of Amsterdam, situate No. 182/210 Nieuwe Zijds Voorburgwal;

and have served my writ addressing myself to and leaving copies of these presents with W. van Guldener, Ass. Postmaster at the said office;

and I, bailiff, have notified the aforesaid St. Louis South-Western Railway Company, established at No. 408 Pine Street, St. Louis, Missouri, United States of America, incorporated under the laws of the State of Missouri, U. S. A., and

Berryman Henwood, as trustee of said debtor, of like address;

that my requester is the trustee for the holders of the aforesaid bonds designated First Terminal & Unifying Mortgage Bonds, issued by the St. Louis South-Western Railway Company aforesaid, which bonds are outstanding and unpaid in the afore-mentioned amount as principal;

that the said bonds and the coupons appertaining thereto are governed by American law and that according to said law they are to be regarded as "negotiable instruments";

that the principal of and the interest on the said bonds are payable, as set forth above, in Amsterdam in guilders on the basis of the amounts and at the rates of exchange specified above;

that the place of payment in Amsterdam has not been indicated in the bonds or in the coupons or by the St. Louis South-Western Railway Company aforesaid;

that under the terms of the said bonds and the said Indenture the St. Louis South-Western Railway Company has bound itself to pay to the requester on behalf of the holders of said bonds and said coupons, in the event of default in payment as stipulated in the bonds and Indenture, the total amount due and unpaid as principal of and interest on all the outstanding bonds and coupons, the requester having the right to summon the St. Louis South-Western Railway Company to pay the said amount and to secure judgment against said Company accordingly.

that the St. Louis South-Western Railway Company is in default and has defaulted in the payment of the interest due on January 1st, 1936, and on July 1st, 1936, on the aforesaid bonds;

that the requester demands and consequently I, bailiff, Have Summoned: the aforesaid St. Louis South-Western Railway Company and the aforesaid Berryman Henwood

immediately to pay in guilders on the basis of the amounts and at the rates of exchange specified in the said bonds and coupons to my requester on behalf of the holders of said bonds and coupons at a place in the Municipality of Amsterdam to be indicated by the said St. Louis South-Western Railway Company the full amount now claimable as principal of and/or interest on the said outstanding bonds and coupons, except on such bonds and coupons as the holders thereof have made their own choice as to the currency in which payment is required;

whereupon the payment demanded was refused, the reason given for the refusal to pay being: "I shall not pay,"

I, bailiff, have further summoned the aforesaid Mr. W. van Guldener to sign this Protest, which he refused, stating as reason for his refusal that he deemed it unnecessary.

I, bailiff, therefore have a note of protest of non-payment of the afore-mentioned promissory notes to bearer.

Done in the presence of the above-mentioned witnesses, who have together with me signed this document.

The cost of these presents is f48.70.

Signed: N. WAGENAAR, bailiff,
H. F. BELS, witness,
B. M. WAGENAAR, witness.

Seen for the legalization of the signature of Nicolaas Wagenaar, bailiff,

Signed: C. G. POUW,
Notary Public.

Exhibit B.

St. Louis Southwestern Railway Company.
Office of the President.
165 Broadway

Edwin Gopld,
President.

New York March 25, 1912.

Dear Mr. Franklin:

Will you kindly confirm by letter to Mr. Arthur J. Trassel, Secretary of St. Louis Southwestern Railway Company, No. 165 Broadway, New York, our arrangements for your services as Trustee for the payment of coupons on the new First Terminal and Unifying Bonds, as follows:

The St. Louis Southwestern Railway Co. is to pay you for your services as Trustee under the Mortgage fifty cents per bond of \$1,000 each, to be paid as the bonds are issued. The road may pay the coupons on this issue through you, and in that event, the payment is to be made without cost to the road, if the money to pay the coupons is deposited with you ten days before the maturity of the coupon; except that the road will pay the actual cost of paying the coupons presented in England and Amsterdam. In England, I understand, your branch will pay them without expense, and in Amsterdam, the charge is to be one-quarter of one per cent., and the foreign exchange necessary in the transaction is to be furnished by you at a fair current rate.

Very truly yours,

WILLIAM H. TAYLOR,
Vice-President.

L. B. Franklin, Esq.,
Vice-Prest., Guaranty Trust Co. of N. Y.,
No. 28 Nassau St., New York.

Exhibit C.

March 28, 1912.

St. Louis Southwestern Railway Company First Terminal
and Unifying Mortgage 5% Bonds.

Arthur J. Trussell, Esq., Secretary,
St. Louis Southwestern Railway Company,
165 Broadway, New York City.

Dear Sir:

We are in receipt of a letter dated March 25th, from your Vice President, Mr. William H. Taylor, confirming the arrangements in connection with our services as Trustee under the new First Terminal and Unifying Mortgage, and also the arrangements with us for the payment of coupons. Your understanding as to the arrangement with us as Trustee is entirely correct, but I would call your attention to the fact that with regard to coupon payments abroad, it has been provided in the mortgage, by mutual consent, that these bonds may also be payable in French and German money, as well as English and Dutch. With this exception the terms stated in your letter are entirely correct and I hereby confirm.

Yours truly,

L. B. FRANKLIN,
Vice-President.

Filed Nov. 11, 1937. Jas. J. O'Connor, Clerk.

2. Claimant's Exhibit 1, being the First Terminal and Unifying Mortgage of the Debtor, dated January 1, 1912, annexed to the Claimant's proof of claim.

3. Claimant's Exhibits 2, 3, and 4, being Exhibits A, B, and C respectively, attached to the aforesaid stipulation of November 8, 1937.

4. Claimant's Exhibit 5, which was conceded on the record to be true photostat copies of title page and three pages of a book which is received in the Dutch courts as evidence of Dutch statutory laws; and also translation is of said title page and Sections 143 and 176, being sections of the Dutch Commercial Code, and conceded on the record to be correct

translations. The portion of said Exhibit constituting said translations is as follows:

(Translation)

The Dutch Codes

as amended and supplemented to January 1, 1936,

Together with

The Laws and Decrees Most Important to Their Explanation,
with Reference to the French and Dutch Provisions
Relating to Each Article.

Published by

Mr. J. A. Fruin
Professor at Utrecht

(aided by Mr. Th. A. Fruin, Attorney at Rotterdam.)

The Hague
Martinus Nijhoff
1936.

(Translation)

176. The provisions applicable to bills of exchange in the following matters are also applicable to promissory notes to the extent that they are not incompatible with the nature of promissory notes:

The endorsement (Articles 110-119);

The due date (Article 132-136);

The payment (Articles 137-141);

The right of recourse in case of non-payment (Articles 142-149, 151-153);

The payment by third party (Articles 154, 158-162);

The duplicate of the bill of exchange (Article 166 and 167);

The loss of bills of exchange (Article 167a);

The alterations (Article 168);

The statute of limitations (Article 168a and 169-170);

The holidays, the computation of periods of time and the prohibition of days of grace (Articles 171, 171a, 172 and 173).

The provisions regarding bills of exchange payable by a third person or in a place different from the place of residence of the drawee (Article 103 and 126), the interest clause

(Article 104), the discrepancies in stating the amount due (Article 105), the consequences of the affixing of a signature under the circumstances described under Article 106, the consequences of (the affixing of) the signature by a person acting without authority or exceeding his authority (Article 107), and the letters of exchange in blank (Article 109), are also applicable to the promissory note.

The provisions regarding the guarantee (Articles 129-131) are also applicable to promissory notes; in cases where in accordance with Article 130 last paragraph the guarantee does not contain mention of the person in whose favor it is given, the guarantee is deemed to have been given in favor of the signer of the promissory note (Commercial Code former Article 209).

(Translation)

143a. The payment of a bill of exchange must be demanded, and the protest following thereupon, must be made at the residence of the drawee.

If the bill of exchange has been drawn so as to be payable in another indicated residence or by another indicated person either in the same or in a different municipality, the payment must be demanded, and the protest must be made in the place (so) indicated or with the person (so) indicated.

If the person obligated to pay the bill of exchange is totally unknown or cannot be found, the protest must be made at the post office of the residence indicated for the payment, and if there is no post office there, with the head of the local administration. The same rule applies if the bill of exchange is drawn so as to be payable in a municipality different from the municipality where the drawee resides and if the residence (in such municipality) where the payment should be made is not indicated.

143b. Protests, as well for non-acceptance as for non-payment, shall be executed and delivered by a notary, the clerk of the district judge or a bailiff. They shall be accompanied by two witnesses.

The protests shall contain the following:

1. An exact copy of the bill of exchange, of the acceptance, of the endorsements, of the guarantee and of the addresses written thereupon.
2. Mention that they (i. e. the aforementioned notary, clerk and bailiff) have requested from the persons or in the places mentioned in the preceding Section acceptance or

payment (of the bill of exchange) and have not obtained same.

3. Mention of the reasons given for refusal to accept or pay (the bill of exchange).

4. The demand to sign the protest and the reasons given for refusing (to do so).

5. Mention of the fact that the notary, court's clerk or bailiff protested against such refusal to accept or pay (the bill of exchange). If the protest relates to a bill of exchange which has been lost, a description, as accurate as possible, of the contents of the bill of exchange will suffice instead of the requirements mentioned under 1 of the preceding paragraph."

5. Claimant's Exhibit 6, being a certified copy of a resolution of the Board of Directors of the Debtor dated December 3, 1935, with respect to the omission of payments of interest due January 1, 1936, on the bonds involved in Claimant's claim, it being conceded on the record that a copy of said resolution was, about the date thereof, sent to the Claimant. Said Exhibit 6 is as follows:

(Claimant's Exhibit 6.)

"Excerpts from Minutes of Meeting of the Board of Directors St. Louis Southwestern Railway Company held in New York, December 3, 1935.

• • •

The President then stated that on the basis of estimated receipts and necessary disbursements during the month of December 1935, the Company will have on hand on December 31, 1935, the sum of \$578,500. in cash; that said amount will be insufficient to pay such interest and, if so applied, the Company will be without funds to carry on its current operations.

After discussion and upon motion duly made and seconded, it was unanimously

Resolved, That in view of the cash position of the Company as disclosed by the report of the President submitted to this meeting, the President is directed to omit payment of interest due January 1, 1936 on the following bonds, issued or guaranteed by this Company:

Second Mortgage Gold Income 4s due 1989

First Terminal and Unifying Mortgage 5s due 1952

General and Refunding Mortgage 5s due 1990

Central Arkansas & Eastern 5s due 1940

Stephenville North & South Texas 5s due 1940.

Be It Further

Resolved, that the respective trustees of the mortgages securing said bonds be notified by the Secretary of the Company of such omission of payment.

* * * * *

I, Charlton Messick, Assistant Secretary of the St. Louis Southwestern Railway Company, do hereby certify the foregoing to be a true and correct excerpt from minutes of the meeting of the board of directors of said Company held in New York on December 3, 1935.

CHARLTON MESSICK,
Assistant Secretary.

(Corporate Seal)

6. Claimant's Exhibit 7, being a notice dated June 4, 1936, of the Claimant to the holders of the bonds secured by the aforesaid First Terminal and Unifying Mortgage of the debtor, it being conceded on the record that said notice was published on June 4, 1936, in the following daily newspapers in the United States:

The Herald Tribune, New York, New York,

Chicago Daily Tribune, Chicago, Illinois,

St. Louis Globe-Democrat, St. Louis, Missouri,

The Wall Street Journal, New York, New York;

and was published on June 6, 1936, in The Times, London, England; on June 8, 1936, in a newspaper of general circulation published in Zurich, Switzerland; on June 9, 1936, in a daily newspaper of general circulation published in Amsterdam, Holland.

Said Exhibit 7 is as follows:

Claimant's Exhibit 7.

To the Holders of St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage Bonds:

St. Louis Southwestern Railway Company (hereinafter called the Debtor) filed a petition for reorganization under

Section 77 of the Federal Bankruptcy Act on December 1² 1935, which was on that date approved by the United States District Court, Eastern Division, Eastern Judicial District of Missouri. A trustee of the Debtor's property has been appointed.

In each coupon bond of the above issue the Debtor promises to pay

"at its office or agency in the Borough of Manhattan, City and State of New York, One thousand Dollars in gold coin of the United States of America, of or equal to the standard of weight and fineness as it existed January 1, 1912, or in London, England, £205 15s 2d, or in Amsterdam, Holland, 2490 guilders, or in Berlin, Germany, marks 4200, D. R. W. or in Paris, France, 5180 francs, and to pay interest thereon at the rate of five per cent. per annum. from the first day of January, 1912, in said respective currencies, * * *. Payment of the principal and interest of this bond will be made at the holder's option, at the office or agency of the Railway Company in the Borough of Manhattan, in the City and State of New York, or at designated offices in the foreign cities and countries above mentioned. * * *"

On April 6, the United States Supreme Court refused to interfere with the decision of the lower Federal Courts, in Anglo-Continental Treuhand, A. G. v St. Louis Southwestern Railway Company (81 Fed. 2nd 11), that a holder of matured coupons of the above bonds was entitled, under the circumstances in that case, to the value of guilders specified in the coupons; the rate of exchange in that case resulted in a judgment against the Debtor at the rate of approximately \$1.69 for each dollar face amount of coupons.

Events of default having occurred under the provisions of the Indenture securing these bonds, the undersigned, as Corporate Trustee, while taking steps to accelerate the maturity of the bonds, was enjoined from so doing by the Court pursuant to a petition filed by the Debtor's trustee.

In his petition and at the hearing thereon, the Debtor's trustee expressed doubt as to the proper date for fixing the rate of exchange applicable in determining the amount of dollars payable in respect of foreign moneys; and took the position that such date cannot be prior to an election to receive payment in foreign money; and furthermore, that the undersigned, as Corporate Trustee, cannot exercise in behalf of bondholders the multiple currency election in the bonds, but that such election can be exercised only by the bondholders themselves. Although the undersigned does not

of course admit the correctness of such a position, it desires to call the same to the attention of the bondholders in order that they may be in a position to take such steps in their own behalf, in making any demand and election under the multiple currency clause of the bonds (considering where any such demand should be made), in filing proof of claim, etc., as they may deem advisable.

While the Court has extended to August 1, 1936 the time for filing proofs of claim in the reorganization proceedings, the undersigned, as Corporate Trustee, intends within a short time to signify its election to receive payment in guilders, and to file proof of claim on a guilder basis, in respect of all bonds the holders of which shall not have previously acted in their own behalf. Any bondholder who has made or desires to make any election other than guilders is requested to notify the undersigned immediately, stating the election made or desired and the principal amount and number(s) of his bond(s). Nevertheless, because of the question indicated above as to the legal right of the undersigned to act in behalf of bondholders, bondholders should immediately consider what steps they deem advisable to take in their own behalf, in making demand and election under the multiple currency clause, filing proof of claim, etc.

GUARANTY TRUST COMPANY OF
NEW YORK,
as one of the Trustees under St. Louis
Southwestern Railway Company
First Terminal and Unifying Mort-
gage dated January 1, 1912.

Dated, 140 Broadway, New York, N. Y., June 4, 1936."

7. It was stipulated on the record that registered mail item T-53892, containing the proof of claim of the Claimant, was verified September 24, 1936, and addressed to F. H. Millard, Comptroller, St. Louis Southwestern Railway Company, Debtor, 515 Cotton Belt Building, 408 Pine Street, St. Louis, Missouri, was mailed by the Claimant on September 24, 1936, and was received by the United States Post Office in St. Louis on September 25, 1936, and was received by one C. Bieber, mail clerk and employee of the Trustee and Debtor, on the morning of Saturday, September 26, 1936, and that the said F. H. Millard, Comptroller, was present at the general office, 515 Cotton Belt Building, 408 Pine Street, St. Louis, Missouri, until 12:30 P. M., September 26, 1936, at the above address, and that said C. Bieber, mail clerk, was authorized

to receipt for mail addressed to said F. H. Millard, Comptroller. Said claim was endorsed by said F. H. Millard, as follows: "Received and filed, F. H. Millard, September 28, 1936."

8. Claimant's Exhibit 8, being a registered mail receipt for said registered item T-53892, dated September 26, 1936, signed for F. H. Millard by the said C. Bieber.

9. It was stipulated on the record that as to Exhibit A of the stipulation dated November 8, 1937, being also Exhibit No. 2 on Claimant's proof of claim, there was at the time of the execution thereof and still is attached, a form of coupon bond as appearing in the aforesaid First Terminal and Unifying Mortgage of the Debtor dated January 1, 1912, at page 3 thereof; that the Guaranty Trust Company of New York was and is the agency for payment designated by the Debtor and that the Debtor has never designated any office or agent in the United States, other than the main office of the Guaranty Trust Company in New York, pursuant to the provisions of the last paragraph of Section I, Article 3, of the said First Terminal and Unifying Mortgage; that the said Guaranty Trust Company of New York has and has had no branch office in Holland; that the First Terminal and Unifying Mortgage Bonds have been listed on the New York Stock Exchange since the year 1915, and have been actively traded in thereon since that time, and none of such bonds was on December 12, 1935, owned, or is now owned, by the parties referred to in Paragraph No. 10 of the aforesaid stipulation dated November 8, 1937.

10. Claimant offered in evidence certain letters marked for identification as claimant's Exhibit No. 9. It was stipulated on the record that the parties signing the aforesaid letters sent the same to the claimant on or about the dates appearing thereon; that their signatures are correct; that the summoning of said witnesses is waived, and that said witnesses if present would testify to the facts set forth in said letters. Objection was made by counsel for the trustee of the debtor on the ground that said letters and testimony do not and could not constitute an election in that the letters were not addressed or communicated to the debtor or its trustee, but were communicated to a third party, namely, the claimant, and upon the second ground that said letters were not relevant as an authorization of an act done for the bondholders by the claimant; nor would such testimony be so relevant, since the alleged election made by the Guaranty Trust Company is in its capacity as trustee on the mortgage, and not on behalf of the individual bondholders writing such let-

ters. The Court thereupon reserved its ruling but, by a subsequent order, admitted said letters in evidence for whatever probative value they might have, said letters to be considered in connection with the aforesaid stipulation, and overruled the objection of the trustee for the debtor, allowing an exception thereto. The said letters were all written to the claimant after publication in June, 1936, by the claimant of its notice to bondholders in the terms contained in claimant's Exhibit 7, and stated that the writers of said letters were the owners of a certain number of bonds of the issue involved in the claim of the claimant, in most cases designating the serial numbers thereof, and announced to the claimant the desire of the writers that claim should be made in guilders. There is set forth below a list of the names, addresses and number of bonds, each of a dollar principal amount of \$1,000.00, as shown by said letters. Except where specifically stated, all letters were sent to the claimant prior to the filing of the claim.

| Name | Address | No. of Bonds |
|--|---|--------------|
| Pennsylvania Mutual Life Insurance Company | Philadelphia, Pa. | 1 |
| Alfred M. Darlow, Executor of Estate of Laura M. Darlow | Rochester, N. Y. | 8 |
| The Continental Bank & Trust Company of N. Y., Trustee | New York City | 1 |
| Low Pipe & Supply Co. | Chicago, Ill. | 1 |
| The Badger State Bank | Denmark, Wis. | 5 |
| Bank of Clarkson | Clarkson, Ky. | 4 |
| Antonia C. Hewitt | c/o R. L. Day & Co., 14 Wall St., New York City | 10 |
| University of Rochester | Rochester, N. Y. | 139 |
| The First National Bank of Portland | Portland, Ore. | 5 |
| American National Insurance Company | Galveston, Tex. | 15 |
| The First-Mechanics National Bank of Trenton | Trenton, N. J. | 20 |
| National Commercial Bank & Trust Company, Trustee for Bernard L. Patterson | Albany, N. Y. | 1 |
| Albert E. Greene | 415 E. William St., Ann Arbor, Mich. | 1 |

| | | |
|--|---|----|
| F. Henry Koch | Jennings, St. Louis Co., Mo. | 2 |
| C. D. Penniston and wife, Mary B. | Salt Lake City, Utah | 1 |
| Emma B. Sweet | c/o Security Trust Company of Rochester Rochester, N. Y. | 1 |
| York Trust Company | York, Pa. | 5 |
| Mary H. Heenan | Asbury Park, N. J. | 3 |
| George Buchanan | c/o The Citizens State Bank, Sheboygan, Wis. | 1 |
| C. A. Eckburg | c/o The Citizens State Bank, Sheboygan, Wis. | 2 |
| C. E. Garton | c/o The Citizens State Bank, Sheboygan, Wis. | 5 |
| Charles Morris Howard | Baltimore, Md. | 3 |
| Mrs. Ella Longstreth Supplee | c/o Corn Exchange National Bank and Trust Company Philadelphia, Pa. | 5 |
| Myrtle P. Cowan | c/o South Texas Commercial Bank, Houston, Tex. | 10 |
| Charles F. Doering | Daytona Beach, Fla. | 3 |
| The First-American Bank & Trust Company | Middletown, Ohio | 5 |
| Farmers Savings Bank | Mineral Point, Edmund, Wis. | 2 |
| E. A. Bauer | Los Angeles, Calif. | 2 |
| Bank of Prairie Du Sac | Prairie du Sac, Wis. | 27 |
| Edward B. Smith & Co. | Boston, Mass. | 2 |
| John Dano | Scranton, Pa. | 4 |
| Merchants & Farmers State Bank | Marathon, Wis. | 3 |
| The First National Bank of Hancock | Hancock, N. Y. | 7 |
| Union State Bank | Kewaunee, Wis. | 3 |
| Mrs. Theodore D. Bratton | Jackson, Miss. | 5 |
| Metals Bank & Trust Co. | Butte, Montana | 25 |
| First National Exchange Bank of Roanoke, Co-Executor of estate of Paul Massie (Letter dated Sept. 29, 1936) | Roanoke, Va. | 10 |

First National Exchange Bank
of Roanoke, Custodian for
Jean Carrington Hartsook
(Letter dated Sept. 29, 1936) Roanoke, Va.

1

First National Exchange Bank
of Roanoke, Guardian for
Caroline Hartsook
(Letter dated Sept. 29, 1936) Roanoke, Va.

1

11. Certain petitions and orders on file and appearing in the printed record in the said proceeding number 8497 in the said United States District Court were introduced in evidence, and the following constitute summaries thereof, stipulations with reference thereto, or excerpts therefrom, the caption being in all cases omitted:

(a) On December 12, 1935, the Debtor verified and filed Petition No. 1 in these proceedings in which, inter alia, it alleged that there would become due on January 1, 1936, the semi-annual interest on the Debtor's aforesaid First Terminal and Unifying Mortgage Bonds, on its Second Mortgage Bond Certificates and on various other of its obligations; and "that the Debtor is without funds to pay and discharge the aforesaid obligations as they mature * * *; that it is unable to meet its debts as they mature, and desires to effect a plan of reorganization, pursuant to Section 77 of Chapter VIII of the Acts of Congress relating to Bankruptcy as amended"; and therein the Debtor prayed that an order be entered approving the petition as properly filed under said Section 77, and "that the court take and exercise its jurisdiction over the property and affairs of the Debtor and make such orders and enter such judgments and decrees from time to time as may be proper, necessary or incidental to the reorganization of the property, debt and corporate structure of said Debtor."

(b) On December 12, 1935, the District Court of the United States, Eastern Division, Eastern Judicial District of Missouri, signed, and there was filed, Order No. 1 in these proceedings approving the aforesaid petition as properly filed under said Section 77. Paragraph 7 of said order, as amended by Order No. 10, filed in said proceedings on December 28, 1935, orders:

"That all persons, firms and corporations, whatsoever, and wheresoever situated, located or domiciled, hereby are restrained and enjoined from interfering with, attaching, garnisheeing, levying upon, and enforcing liens upon, or in

any manner whatsoever disturbing any portion of the assets, goods, money, railroads, properties and premises belonging to, or in the possession of the Debtors, or from taking possession of or in any way interfering in any manner to prevent the discharge by the Debtors of their duties in the operation of said property and business, under the orders of this Court, and that the commencement of new suits and the continuation of pending suits against the Debtors, or any of them, are hereby stayed and enjoined until after final decree in these proceedings; Provided, however, that suits or claims for damages caused by the operation of trains, buses, or other means of transportation may be filed and prosecuted to judgment in any court of competent jurisdiction, and any order heretofore staying the prosecution of any such causes of action or appeals thereof is hereby vacated."

(c) Order No. 28, dated February 5, 1936, the following portions:

"It Is Ordered:

"1. That the 1st day of Jane, 1936, be, and it hereby is, fixed as the reasonable time within which the claims of creditors of St. Louis Southwestern Railway Company, St. Louis Southwestern Railway Company of Texas, Central Arkansas and Eastern Railroad Company and Stephenville North & South Texas Railway Company, Debtors herein, including claimants in tort whose claims accrued prior to December 12, 1935, may be filed or evidenced and after which no claim not so filed or evidenced may participate, provided, however, that claims arising out of the Trustee's disaffirmance of a contract after May 1st, 1936, may be filed within thirty days after notice of such disaffirmance is given.

"2. That each claim shall be filed in duplicate with F. H. Millard, Comptroller of the Debtors, 515 Cotton Belt Building, 408 Pine Street, St. Louis, Missouri, who is hereby directed immediately to stamp the date of receipt thereon and acknowledge receipt of the same.

"4. That the trustee or trustees under any mortgage, deed of trust, or indenture outstanding against the estates of the respective Debtors, or against any portion thereof, may, within the time hereby prescribed, file a verified claim in behalf of all bonds or securities outstanding under such mortgage, deed of trust, or indenture, in which event it shall be unnecessary for the holders of such bonds or securities to file claims in their own behalf."

(d) On February 29, 1936, Anglo-Continental Treuhand, A. G., filed herein its Petition to Intervene (Petition No. 39) alleging, inter alia, that it was a foreign corporation organized and existing under the laws of the Principality of Liechtenstein and the bona fide owner of 685 coupon bonds of the aforesaid issue, and alleging that:

"8. After January 1, 1934, when 36 of said coupons became due and payable, your petitioner attempted to present said coupons at the office or agency of the above named debtor in Amsterdam, Holland, for the purpose of demanding payment with respect to each coupon of 62.25 guilders, or a total of 2,241 guilders, and your petitioner was informed that said debtor did not maintain an office or agency in Amsterdam and had made no provision for payment of the said coupons, and on or about January 11, 1934, said debtor advised the committee on Stock List of the New York Stock Exchange in reply to its inquiry regarding payment in foreign exchange of interest coupons on its First Terminal and Unifying Mortgage 5% bonds due 1952 that it had no foreign paying agent and had provided no funds for the payment of coupons in any currency other than that of the United States.

"9. Your petitioner thereafter demanded of said debtor payment of said coupons in guilders, as provided in said coupons, or in lieu thereof its equivalent in legal tender of the United States of America.

"10. Said debtor refused to pay said coupons in guilders, as provided in said coupons, and denied liability under said coupons in any amount in excess of Twenty-five Dollars (\$25.00) legal tender of the United States of America for each coupon, contending that the Joint Resolution of Congress adopted June 5, 1933 (Title 31, U. S. C. 463) relieved said debtor of its obligation to pay the coupons in guilders in Amsterdam, Holland, or its equivalent in legal tender of the United States of America.

"11. Thereafter your petitioner filed suit against said debtor on said coupons due January 1, 1934, and July 1, 1934, and January 1, 1935, in the New York Supreme Court, New York County, said suit being for damages for breach of contract, the amount sought being the value in dollars of 62.25 guilders for each coupon as provided in said coupons. Said suit was thereafter removed by said debtor, defendant therein, to the United States District Court for the Southern District of New York. Said debtor, defendant in said suit, filed answer therein, alleging that said joint resolution of

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Congress, hereinbefore mentioned, relieved it of any obligation to pay any sum except the sum of Twenty-five Dollars (\$25.00) in legal tender of the United States of America. Upon motion by your petitioner, plaintiff in said suit, said defense was stricken, and summary judgment on the complaint in favor of plaintiff therein was rendered in said cause. Defendant therein appealed from said judgment and said judgment was thereafter affirmed by the United States Circuit Court of Appeals for the Second Circuit on January 13, 1936."

"20. By reason of the foregoing matters and things, and under the provisions of said mortgage hereinbefore referred to, said trustee of said mortgage is given the right, upon the written request of the holders of twenty-five percent (25%) in amount of said First Terminal and Unifying Mortgage bonds then outstanding, to declare the principal of all said bonds then outstanding to be due and payable immediately.

"Upon information and belief your petitioner states that said trustee has not yet declared the principal due."

"21. Your petitioner further states that by reason of the happening of the events of default as hereinbefore mentioned said trustee of said mortgage, under the terms of said mortgage (subject, however, to any rights which may exist under and by virtue of mortgages constituting liens prior to the lien of said First Terminal and Unifying Mortgage) has the right to exercise the right of entry therein conferred and to proceed to protect and enforce its rights and the rights of the holders of said First Terminal and Unifying Mortgage bonds in the manner described in said mortgage."

"23. In order that the interest of your petitioner and all other bondholders similarly situated be properly protected, and to enable them to appraise any plan of reorganization of the debtor which may be submitted for their acceptance; and in order to enable this court to take appropriate action in respect of any application which may be made for approval or confirmation of such plan, it is appropriate that the extent and priority of the lien of the First Terminal and Unifying Mortgage and the amounts due and to become due upon said First Terminal and Unifying Mortgage bonds and coupons thereunder be ascertained; and the manner of payment be ascertained and decreed by this Court, and that your petitioner be permitted to intervene in its own behalf and on

behalf of all other bondholders similarly situated in order that it may have notice of and be informed concerning any and all applications which may be made to this Court affecting the trusts and in order that it may have an opportunity to be heard in connection therewith.

"Wherefore, your petitioner prays:

"1. That leave be granted to it to intervene in the above entitled cause, on its own behalf, and on behalf of all other bondholders similarly situated for the purpose of protecting its rights under said First Terminal and Unifying Mortgage and its rights under the terms of said bonds and coupons issued thereunder which it now owns.

"2. That it be adjudged and decreed by this Court that the amounts now due and which may hereafter become due your petitioner and all other bondholders similarly situated under the terms of said First Terminal and Unifying Mortgage and said bonds and coupons secured thereunder is the number of guilders set out in said bonds and coupons or the value in legal tender of the United States of the amount of guilders named in said bonds and coupons, and that any plan of re-organization approved by this Court shall be on the basis of payment in said amounts."

On April 15, 1936, Anglo-Continental Treuhand, A. G., filed herein its Amended Intervening Petition (Petition No. 57) which, inter alia, repeated in substance the allegations and prayers of Petition No. 39.

On April 21, 1936, Anglo-Continental Treuhand, A. G., filed herein its Supplemental Intervening Petition (Petition No. 58) which, inter alia, repeated in substance the allegations and prayers of Petition No. 39, and prayed that it be granted leave to intervene for the purpose of protecting its rights and the rights of other bondholders similarly situated "so far as relates to the right, power, and duty of the Guaranty Trust Company of New York as Trustee, or the bondholders, to declare the principal of said bonds to be due and payable immediately, and so far as relates to the right of said Corporate Trustee [Guaranty Trust Company of New York] and your petitioner and other bondholders to demand and receive the various sums of foreign money in said Indenture and in said bonds and coupons set forth or damages in American money in lieu thereof."

(e) Petition No. 46, being as follows (omitting caption):

(Motion of Berryman Henwood, Trustee, etc., to dismiss
Intervening Petition of Anglo-Continentale Treuhand,
A. G.)

(Petition No. 46.)

In the District Court of the United States, Eastern Division,
Eastern Judicial District of Missouri.

In the matter of

St. Louis Southwestern Railway Company, Debtor,

In Proceedings for reorganization of a Railroad.

No. 8497.

Now comes Berryman Henwood, Trustee of the property of St. Louis Southwestern Railway Company, Debtor, and moves to dismiss the intervening petition of Anglo-Continentale Treuhand, A. G., upon the following grounds:

1. That said petition fails to state facts sufficient to constitute a valid reason or reasons why said petitioner is entitled to the relief or any of the remedies prayed for in said intervening petition.

2. That an individual bondholder should not be permitted to intervene in this proceeding, generally or specially, and that if such right should be granted to said petitioner, it would be difficult to deny such right to other bondholders, and that if numerous individual bondholders or other creditors should be allowed to intervene, this proceeding would become so cumbersome and complicated as to make impossible the preparation and consummation of a plan of reorganization, thus defeating the purpose of amendatory Section 77 of the acts of Congress relating to bankruptcy.

3. That the mortgage trustee of St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage has the right to represent the interests of all bondholders thereunder, and that by its said petition petitioner seeks to usurp the prerogative of said mortgage trustee, not only as to its own interests, but as to those of all bondholders under said mortgage.

4. That the filing of said petition constitutes a violation of the terms of the First Terminal and Unifying Mortgage of said Debtor and especially Section 18 of Article Fourth thereof, which section reads as follows:

"No holder of any first Terminal and Unifying Mortgage Bond or coupon shall have any right to institute any suit, action or proceeding in equity or at law for the foreclosure of this indenture, or for the execution of any trust here-

under, or for the appointment of a receiver, or for any other remedy hereunder, unless such holder previously shall have given to the Trust Company written notice of such default and of the continuance thereof, as hereinbefore provided, nor unless also the holders of fifteen per cent in amount of the First Terminal and Unifying Mortgage Bonds then outstanding shall have made written request upon the Trust Company, and shall have afforded to it a reasonable opportunity either to proceed to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its own name; nor, unless, also, they shall have offered to the Trust Company security and indemnity satisfactory to it against the costs, expenses and liabilities to be incurred therein or thereby; and such notification, request and offer of indemnity are hereby declared in every such case, at the option of the Trust Company, to be conditions precedent to the execution of the powers and trusts of this indenture and to any action or cause of action for foreclosure or for the appointment of a receiver or for any other remedy hereunder; it being understood and intended that no one or more holders of First Terminal and Unifying Mortgage Bonds and coupons shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the lien of this indenture, or to enforce any right hereunder, except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all holders of such outstanding bonds and coupons."

5: That the mere failure of the mortgage trustee of said First Terminal and Unifying Mortgage to file an intervening petition in this proceeding is insufficient to justify the granting of an intervention to said petitioner, either to represent itself or to represent other or all bondholders under said mortgage.

*6. That the petition fails to allege the failure or refusal of the mortgage trustee under said First Terminal and Unifying Mortgage properly to discharge its trust, and that in the absence of such failure upon proper demand made in accordance with the terms of the mortgage, said trustee is the sole representative of the bondholders; and that there is no justification either in said mortgage or at law or equity for allowing said petitioner to intervene in this cause.

7. That petitioner has shown no cause or reason why the said mortgage trustee cannot fully represent the interests here sought to be asserted by the petitioner, including the interests of the petitioner.

8. That amendatory section 77 of the acts of Congress relating to bankruptcy, grants creditors the right to be heard upon all questions arising in the proceeding, including a plan of reorganization, without filing a petition to intervene, and that the granting of intervention, general or special, is unnecessary to give said petitioner or any other creditor or a mortgage trustee any essential right in connection with this proceeding.

9. That if intervention be said petitioner should be deemed essential in order that petitioner might be heard on a plan of reorganization, any petition therefor is premature and inappropriate at this time, because no plan of reorganization has been approved by the Interstate Commerce Commission, and until so approved no plan can come before the Court for confirmation, and because no plan of reorganization has been filed and none is required to be filed before July 1, 1936.

*10. That the granting to said petitioner of a right to intervene, either generally or specially, requiring all notices to be served on said petitioner in respect of administrative steps and other matters in this cause would unnecessarily impede and increase the costs of this proceeding.

11. That said petitioner has wholly failed to show cause for intervention in this proceeding.

And trustee further moves for such other and further relief as may be just, including an enlargement of his time to answer until twenty days after the service upon said Trustee of an order upon the decision of this motion, in the event this motion or any part thereof should be denied.

Respectfully submitted,

BERRYMAN HENWOOD,

Trustee,

S T. LOUIS SOUTHWESTERN
RAILWAY COMPANY,

Debtor.

By A. H. Kiskaduon,

General Counsel.

Carleton S. Hadley,

Assistant General Counsel, 509 Cotton
Belt Building, St. Louis, Missouri.

Dated March 19, 1936.

Filed Mar. 19, 1936. Jas. J. O'Connor, Clerk.

(f) Berryman Henwood, Trustee of the property of St. Louis Southwestern Railway Company, repeated in substance the above quoted statements of his Petition No. 46, in his subsequent petitions No. 63, dated May 4, 1936, motion to dismiss the amended intervening petition of Anglo-Continentale Treuhand, A. G.; No. 65, dated May 7, 1936, motion to dismiss the supplemental intervening petition of Anglo-Continentale Treuhand, A. G.; No. 92, dated June 10, 1936, amended motion to dismiss the supplemental intervening petition of Anglo-Continentale Treuhand, A. G.

(g) Order No. 156, being as follows (omitting caption):
Order Sustaining (1) Motion of Trustee to Dismiss Amended Intervening Petition of Anglo-Continentale Treuhand, A. G., and (2) Amended Motion of Trustee to Dismiss Supplemental Intervening Petition of Anglo-Continentale Treuhand, A. G.

The motion of Berryman Henwood, Trustee, to dismiss the amended intervening petition of Anglo-Continentale Treuhand, A. G., and the amended motion of Berryman Henwood, Trustee, to dismiss the supplemental intervening petition of Anglo-Continentale Treuhand, A. G., being this day presented to the Court, and the Court having heard the arguments of counsel on said motions, and it appearing to the Court that it is in the best interest of the trust estates of the Debtors that said motions be sustained, and the Court being fully advised on the premises,

It Is Ordered:

That the said motions of Berryman Henwood, Trustee, and the same are hereby sustained by the Court, and the said amended intervening petition and supplemental intervening petition of Anglo-Continentale Treuhand, A. G., are hereby dismissed, and intervention, either special or general, by Anglo-Continentale Treuhand, A. G., is hereby denied.

CHARLES B. DAVIS,
District Judge.

Dated January 2, 1937.

Filed Jan. 2, 1937. Jas. J. O'Connor, Clerk.

(h) Petition No. 56, dated April 10, 1936, the following portions:

"Now comes Berryman Henwood, Trustee of the property of the Debtor St. Louis Southwestern Railway Company, and respectfully represents to the Court:

8. That there were duly issued for a valuable consideration and are now outstanding under the Mortgage \$21,638,000 of bonds of the St. Louis Southwestern Railway Company, which bear interest at the rate of 5% per annum and mature on January 1, 1952, and which, with their appurtenant unpaid coupons now are the lawfully created, valid and existing obligations of the Debtor and entitled to the lien and security of the Mortgage, and are in the hands of numerous bona fide holders for value or are held as pledged securities by certain pledgees or under certain trust agreements.

That, in your Trustee's opinion, such acceleration of the maturity of said First Terminal and Unifying Mortgage Bonds might fix the rate of exchange in regard to payment of said bonds and interest coupons in the currencies of England, Holland, Germany and France and thereby establish the amount of the ultimate liability of the Debtor with respect to said bonds and interest coupons, all in conflict with the provisions, purpose and intention of said amendatory Section 77, and in derogation of the interests of other creditors of the said Debtor and the creditors of other Debtors herein, and that such acceleration might, and in all probability would, create a number of different classifications of bondholders having different and varied claims contrary to the provisions, purpose and intent of said amendatory Section 77."

(This is the petition referred to in Paragraph 14 of the stipulation of November 8, 1937, upon which the order of injunction of May 5, 1936, was entered.)

(i) Order No. 73, dated May 15, 1936, the following portions:

"It Is Ordered:

"1. That the time within which the claims of creditors of St. Louis Southwestern Railway Company, St. Louis Southwestern Railway Company of Texas, Central Arkansas and Eastern Railroad Company, and Stephenville North & South Texas Railway Company, Debtors herein, including claimants in tort whose claims accrued prior to December 12, 1935, may be filed or evidenced and after which no claim not so filed or evidenced may participate, is hereby extended from June 1, 1936 to August 1, 1936, provided, that, except as hereby amended, Order No. 28, entered herein on February 5, 1936, shall be and remain in full force and effect."

(j) Petition No. 81 of Berryman Henwood, Trustee of the Debtor; dated May 22, 1936, the following portion:

"13. That there are outstanding \$21,638,000 principal amount of St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage 5% Bonds, maturing on January 1, 1952, secured by a mortgage which is a lien on property in the principal Debtor's estate, and under which the Guaranty Trust Company of New York is one of the Trustees, of which there are \$8,063,000 owned by the public; \$13,33,000 pledged by the principal Debtor under one of its mortgages, and \$42,000 held in annuity trusts."

(k) Order No. 81, dated May 22, 1936, the following portions:

"Upon due consideration of the verified petition of the debtors and the Trustee with respect to the filing of proofs of claim and of evidence of interest relating to the claims and securities referred to in the said petition, and pursuant to the provisions of sub-division (c) (7) of amendatory Section 77 of the Acts of Congress relating to bankruptcy, the court being fully advised in the premises,

"It Is Ordered:

"1. That each mortgage trustee or trustees, designated below is authorized to file on or before August 1, 1936, a claim verified on information and belief, on behalf of the securities outstanding under the respective instruments under which they are acting:

• • • • •
"Guaranty Trust Company of New York, Trustee:

"St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage 5% Bonds, maturing on January 1, 1952 (covered by paragraph 13 of said petition).

"Stephenville North & South Texas Railway Company First Mortgage 5% Thirty Year Gold Bonds, maturing on July 1, 1940 (covered by paragraph 18 of said petition).

"Paragould Southeastern Railway Company First and refunding Mortgage 5% Thirty-Year Gold Bonds, maturing on January 1, 1944 (covered by paragraph 25 of said petition).

(This paragraph also mentions four other corporate mortgage trustees with respective mortgages designated.)

"2. That each claim filed in accordance with Paragraph 1 of this Order shall be for the account and benefit of the holders of the securities outstanding under the applicable indenture, as their respective rights, title, and interest may hereafter be established and determined under orders hereafter to be entered in these proceedings, and where claims are filed by

the mortgage trustee or trustees, pursuant to the provisions of this order, it shall be unnecessary for the holders of the securities to file claims in this proceeding in their own behalf. Pledged bonds and treasury bonds not released of record shall be included in any such claim, but if any of the bonds or securities referred to in such claim is known or believed by the trustee or trustees filing the claim to have been paid or retired, but not yet satisfied of record, the facts relating thereto shall be stated.

"Claims filed under said Paragraph 1 need only set forth the aggregate amount of the securities outstanding under the applicable indenture;

"5. That claims now or hereafter filed or evidenced under Order No. 28 or this Order shall be for the account and benefit of the holders of bonds, debentures and other securities designated above as their respective rights, title and interest may be established and determined hereafter in these proceedings. The sale, assignment or transfer of any bond, debenture or other security (except stock) in respect of which a claim shall have been filed in these proceedings, and of the claim thereon in these proceedings, shall be sufficiently proved for any purpose by the production of such security by a transferee or assignee (a) in bearer form or (b) registered as to principal in the name of such transferee or to bearer or (c) registered as to principal and interest in the name of such transferee or (d) registered as to principal and interest or registered as to principal, and duly endorsed in blank or to such assignee, or accompanied by appropriate instruments of assignment and transfer in blank or to such assignee, with signatures guaranteed in either case."

"6. That any party to these proceedings or anyone else having a substantial interest, upon leave of Court for cause shown may, within sixty days of the filing of any claim hereafter filed pursuant hereto, protest the claim as filed or evidenced for the reasons to be fully stated in such protest."

(1) Order No. 104, dated July 6, 1936, the following portion:

"It Is Ordered:

"1. That the time within which the claims of creditors of St. Louis Southwestern Railway Company, St. Louis Southwestern Railway Company of Texas, Central Arkansas and Eastern Railroad Company, and Stephenville North & South Texas Railway Company, Debtors herein, including claimants in tort whose claims accrued prior to December 12, 1935, and including claimants who may file claims under Order \$1,

ered herein on May 22, 1936, may be filed or evidenced and
er which no claim not so filed or evidenced may partici-
e, is hereby extended from August 1, 1936; to October 1,
6, provided, that, except as hereby amended, Order No.
entered herein on February 5, 1936, and Order No. 81,
ered herein on May 22, 1936, shall be and remain in full
e and effect."

m) Petition No. 111, being as follows (omitting caption):
ition of Trustee for Order Stating that Securities Need
Not Be Filed With Proofs of Claim.

The petition of Berryman Henwood, Trustee, respectfully
presents:

That, in addition to the claims of mortgage trustees, in-
dividual security holders in many instances are filing proofs
claim on certain securities, and that your Trustee has re-
ceived numerous inquiries from individual security holders
as to whether it is necessary to annex their securities to the
ofs of claim so filed.

That Order No. 81 (Printed Record, page 777), en-
tered herein on May 22, 1936, provides that claims filed by
mortgage trustees under paragraph 1 of said order need not
ex the original or a copy of the mortgage, deed of trust,
other indenture, if any, respecting which the claims are
, or of the securities thereunder, but that said order is
nt as to the filing of claims by individual security holders,
that Order No. 28 (Printed Record, page 257) entered
in on February 5, 1936, also is silent as to the necessity
ding securities.

That your Trustee is of the opinion that individual se-
curity holders should follow the provisions of Orders Nos. 28
81 in preparing and filing claims which they may desire to
erein, and that they should not be required to annex their
ties to proofs of claim or otherwise to file said securi-

herefore, Trustee prays that an order be entered herein
ng that securities need not be filed with proofs of claim
by individual security holders.

BERRYMAN HENWOOD,
Trustee.

Kiskaddon,
General Counsel;

ton S. Hadley,
Assistant General Counsel,
Cotton Belt Building,
St. Louis, Missouri.

ed September 9, 1936.

United States of America,
Eastern Judicial District of Missouri,
Eastern Division,
City of St. Louis, Missouri—ss.

Berryman Henwood, being duly sworn, upon his oath says that he has read the above and foregoing petition and that the facts therein stated are true, as he verily believes.

BERRYMAN HENWOOD.

Subscribed and sworn to before me this 4 day of September, 1936.

THEO. R. SCHNEIDER,
(Seal) Notary Public.

My Commission expires August 2, 1937.

Filed Sept. 9, 1936. Jas. J. O'Connor, Clerk.

(n) Order No. 111, being as follows (omitting caption):
Order That Securities Need Not Be Filed With Proofs of
Claim.

The petition of Berryman Henwood, Trustee, for an order stating that securities need not be filed with proofs of claim being this day presented to the Court, and the Court being fully advised in the premises,

It Is Ordered:

That the said petition of the Trustee be and the same hereby is approved, and that persons filing individual proofs of claim on securities need not annex to said proofs of claim the original securities or copies thereof, or otherwise file said securities in this Court or with the Trustee or F. H. Millard, Comptroller.

CHARLES B. DAVIS,
District Judge.

Dated September 9, 1936.

Filed Sept. 9, 1936. Jas. J. O'Connor, Clerk.

(o) Judgment upon mandate from the United States Circuit Court of Appeals, Eighth Circuit, in Cases No. 10,679 and 10,687 in Bankruptcy. The following portion:

“Now, Therefore, It Is Ordered, Adjudged and Decreed that the injunction heretofore entered on May 5, 1936, against

uaranty Trust Company of New York as Trustee under First Terminal and Unifying Mortgage of St. Louis Southwestern Railway Company is hereby dissolved; that the petition of Berryman Henwood as Trustee of the Debtor, filed April 11, 1936, upon which said injunction was granted, is hereby dismissed, and it is further ordered, adjudged and decreed that Guaranty Trust Company of New York as Trustee under First Terminal and Unifying Mortgage of St. Louis Southwestern Railway Company dated January 1, 1912, is hereby authorized to declare the principal of any or all of St. Louis Southwestern Railway Company First Terminal and Unifying Bonds issued under the provisions of said mortgage and now outstanding to be due and payable either immediately or, at the election of said Guaranty Trust Company of New York as Trustee, as of May 5, 1936, said declaration to be effective as though made on May 5, 1936, and to serve notice in writing of said declaration upon the Debtor and the Trustee of the Debtor and upon any other person or corporation subject to the jurisdiction of this Court, said notice or notices, at the election of said Guaranty Trust Company of New York as Trustee, to be considered as though served on May 5, 1936, and to be effective as of said date; and it is further ordered that the Trustee of said Debtor shall pay to the Clerk of the United States District Court out of the estate of said Debtor the sum of \$194.35 awarded as costs against said Trustee in the United States Circuit Court of Appeals, and that all costs of said proceeding in this Court shall be charged against the estate of the Debtor."

(p) Petition No. 189 of Berryman Henwood, Trustee of the Debtor. That portion stating that "St. Louis Southwestern Railway Company has never maintained an office or agency at Amsterdam, Holland, and that since December 12, 1935, said Debtor has not been able to pay and has not paid the principal or interest on said bonds or any of them," (referring to the bonds secured by the aforesaid First Terminal and Unifying Mortgage dated January 1, 1912). Said petition was filed by the Trustee of the Debtor on April 12, 1937, but subsequently withdrawn by leave of Court.

2. There were introduced in evidence the proof of claim of the Claimant, together with all exhibits attached thereto, and the supplement to said proof of claim. Said documents not herein set forth, as they are elsewhere set out in full in the record.

Appellees' Evidence.

F. H. MILLARD testified on behalf of the Trustee of the Debtor and of the Debtor as follows:

Direct Examination.

My name is F. H. Millard. I am the Comptroller of the St. Louis Southwestern Railway Company, Debtor, and am also acting as agent for the Trustee. I know that prior to July 1, 1935, the St. Louis Southwestern Railway Company did not pay any of the coupons on its First Terminal and Unifying Mortgage Bonds in guilders. I know of no requests for such payments by the St. Louis Southwestern Railway Company being made prior to said date, either to me or to other officers of said railroad. No such requests were received by me.

Over objections by counsel for Claimant as to materiality (but not as to the competency of the witness) and exceptions taken to the overruling thereof, the witness testified that he could state from his records what the \$8,155,000 of First Terminal and Unifying Mortgage Bonds were sold for by the company in 1912, and that the price was \$835.00 for each \$1,000.00 principal amount of the First Terminal and Unifying Mortgage Bonds.

I know from my records where the First Terminal and Unifying Mortgage Bonds now outstanding in the hands of the public were held on July 1, 1935.

Over objections that the testimony was immaterial, irrelevant, and incompetent, made by counsel for the Claimant, and exceptions taken to the overruling of said objections, the witness testified that 1,729 individuals or corporations, residents of the United States, held par value of \$7,343,000 of First Terminal and Unifying Mortgage Bonds on July 1, 1935; and that, as to the total number of bonds held on July 1, 1935, by residents of foreign countries, that outside of the United States, 38 holders held \$716,000 par value of said bonds; that in his answer he had included as a foreign holder one holder of one bond in Alaska; that the other holders outside of the United States were: one holder in Belgium, 2 bonds; four holders in Canada of a total of 19 bonds; one holder in Czechoslovakia of 1 bond; two holders in England of a total of 7 bonds; four holders in France of a total of 6 bonds; three holders in Holland of a total of 27 bonds; one holder in Italy of 2 bonds; one holder in Liechtenstein of 610 bonds; one holder in Newfoundland of 1 bond; one holder in Nicaragua of 5 bonds; eighteen holders in Switzerland of a total of 35 bonds.

Arrangements have been made for claimants on these bonds to file their claims with me as Comptroller and Agent of the Trustee. The claim on the 610 bonds held in Liechtenstein by the Liechtenstein Corporation has been filed with me. These bonds which I have enumerated as being held by residents of the United States and residents of foreign countries are not all of the outstanding issue of said bonds. There are four bonds whose holders I am not able to identify, four \$1,000 bonds.

Cross-Examination.

As to how I know where these holders reside, we made arrangement with the paying agent to have all of the ownership certificates passed through our hands at the time the coupons were paid. This paying agent was the Guaranty Trust Company. That arrangement was made with respect to the coupons of July 1, 1935, and not previous to that time that I know of. No such arrangement to ascertain the residence of bondholders was made with respect to any maturity previous to July 1, 1935, as far as I know.

I have been Comptroller seventeen years. I did not know why no such inquiry was made prior to July 1, 1935. I know why it happened to be made six months before the default of these bonds. The notes which are also in default matured on June 1, 1935, at which time we were uncertain whether we would be required to go into bankruptcy or not, and we took the step of determining as best we could the holders of all our bonds, not only this issue, but all of them, as of the nearest coupon date to June 1, 1935.

All that I know is who presented the coupons on July 1, 1935. As to knowing who beneficially owned the coupons presented, we have no information beyond the ownership certificates. We have an ownership certificate with each group of coupons presented. We have no means of knowledge of the beneficial owners of these bonds in 1934 or any previous year.

I have received claims pursuant to the Court's order in its reorganization, and have observed that claims on 686 bonds have been filed by Anglo-Continental Treuhand, A. G., whose address is in Paris. I intended my answer to cover Mr. Kiskaddon's inquiry as to the 610 bonds, and not to imply that other bonds were not embraced in the ownership of these bonds. I have had called to my attention the fact that the owners of these bonds claim \$686,000, whereas I have only 16,000 for the entire foreign holding of July 1, 1935. I filed with me on the same date, by the Verwaltungsagent, A. G., with Paris office, claim on 262 bonds which in dollars would be \$262,000; and a total of those two would be

more than \$900,000. That is true. I account for the discrepancy by the difference in date, July 1, 1935, and the date of this filing. I don't know from my statement what beneficial foreign and domestic ownership there has been as of dates after July 1, 1935; for example, dates when proofs of claim were filed. That is true. I do not know other than of July 1, 1935.

As to whether my records would show the Pennsylvania Mutual Life Insurance Company was on July 1, 1935, the holder of a \$1,000. bond, they show said company held one bond on said date.

No further evidence was introduced.

GUARANTY TRUST COMPANY
OF NEW YORK,
As Trustee under First Terminal and
Unifying Mortgage dated January 1,
1912, Appellant,
By Davis, Polk, Wardwell, Gardiner
& Reed, Its Attorneys.

BERRYMAN HENWOOD,
Trustee of St. Louis Southwestern
Railway Company, Debtor,
By A. H. Kiskaddon &
Carleton S. Hadley, His Attorneys.

ST. LOUIS SOUTHWESTERN
RAILWAY COMPANY,
By A. H. Kiskaddon &
Carleton S. Hadley, Its Attorneys.

SOUTHERN PACIFIC COMPANY,
By George L. Buland,
Ben C. Dey, Its Attorneys.

Appellees.

(Approval of Stipulation as to Evidence by District Judge.)

This Stipulation as to the Evidence is approved this 14th day of April, 1938.

CHARLES B. DAVIS,
District Judge.

Stipulation as to the Record on Appeal.

Filed April 15, 1938.

In the District Court of the United States, Eastern Division,
Eastern Judicial District of Missouri.

In the Matter of

St. Louis Southwestern Railway Company, Debtor.

In Proceedings for Reorganization of a Railroad.

No. 8497.

Guaranty Trust Company of New York, as Trustee,
Appellant,

vs.

Berryman Henwood, Trustee of St. Louis Southwestern Railway Company, Debtor, St. Louis Southwestern Railway Company, and Southern Pacific Company, Appellees.

It is hereby stipulated and agreed by and between Guaranty Trust Company of New York, as Trustee under St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage dated January 1, 1912, Appellant, and Berryman Henwood, Trustee of St. Louis Southwestern Railway Company, Debtor, St. Louis Southwestern Railway Company, and Southern Pacific Company, Appellees, that the Clerk shall include in the Transcript of the Record to be filed in the United States Circuit Court of Appeals for the Eighth Circuit, in the appeal heretofore allowed on April 2, 1938, from the order dated March 21, 1938, entered in the above entitled cause, the following papers and no others:

1. Proof of claim of Guaranty Trust Company of New York, as Trustee as aforesaid, omitting Schedule "B" attached thereto.
2. Supplement to said proof of claim.
3. Protest against said proof of claim by Berryman Henwood, Trustee of St. Louis Southwestern Railway Company, Debtor.
4. Protest against said proof of claim by St. Louis Southwestern Railway Company.
5. Protest against said proof of claim by Southern Pacific Company.
6. Supplemental protest against said proof of claim by Berryman Henwood, Trustee of St. Louis Southwestern Railway Company, Debtor.

7. Supplemental protest against said proof of claim by St. Louis Southwestern Railway Company.
8. Supplemental protest against said proof of claim by Southern Pacific Company.
9. The order dated March 21, 1938, entered by said court on said proof of claim.
10. The Findings of Fact and Conclusions of Law of the court dated February 23, 1938.
11. The Stipulation as to the Evidence between the parties hereto.
12. The petition for appeal of Guaranty Trust Company of New York.
13. The assignment of errors.
14. The order dated April 2, 1938, allowing the appeal.
15. The Appeal Bond.
16. The citation and the acknowledgments of service thereof.

17. This stipulation.

It is further stipulated and agreed that Schedule "B" attached to said proof of claim, being a form of temporary bond, does not pertain to any of the bonds covered by said proof of claim and is immaterial to the issues involved in this appeal.

It is further stipulated and agreed that the documents referred to in this stipulation constitute the entire record insofar as the same is material to any of the issues involved in this appeal.

DAVIS, POLK, WARDWELL,
GARDINER & REED,
Attorneys for Guaranty Trust Company of New York, as Trustee under St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage dated January 1, 1912, Appellant.

A. H. KISKADDON &
CARLETON S. HADLEY,
Attorneys for Berryman Henwood, Trustee of St. Louis Southwestern Railway Company, Debtor.

A. H. KISKADEON &
CARLETON S. HADLEY,
Attorneys for St. Louis Southwestern
Railway Company.

GEORGE L. BULAND,
BEN C. DEY,
Attorneys for Southern Pacific Com-
pany, Appellees.

The foregoing stipulation is approved this 14th day of April, 1938.

CHARLES B. DAVIS,
District Judge.

(Clerk's Certificate to Transcript.)

United States of America,

Eastern Division of the

Eastern Judicial District of Missouri—ss.

I, Jas. J. O'Connor, Clerk of the District Court of the United States within and for the Eastern Division of the Eastern Judicial District of Missouri Do Hereby Certify the above and foregoing to be a full, true and complete transcript (except insofar as the same is restricted by stipulation as to record on appeal heretofore set out) of the record and proceedings in case No. 8497 In the Matter of St. Louis Southwestern Railway Company, Debtor, in Proceedings for Reorganization of a Railroad, wherein Guaranty Trust Company of New York, as Trustee under St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage dated January 1, 1912 is appellant and Berryman Henwood, trustee of St. Louis Southwestern Railway Company, Debtor, St. Louis Southwestern Railway Company, and Southern Pacific Company, are appellees, as fully as the same remains on file and of record in my office and that the original citation hereto attached and returned herewith.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of said Court at office in the City of St. Louis, in said Division of said District this 15th day of April, in the year of our Lord Nineteen Hundred and Thirty-eight.

JAS. J. O'CONNOR,
Clerk of said Court.
By Cletus E. Rudolph,
Deputy.

(Seal)
S. Dist. Court
East. Div.
St. Jud. Dist.
of Mo.

(Waiver of Notice of Petition for Leave to Appeal, filed in
U. S. Circuit Court of Appeals.)

In the United States Circuit Court of Appeals for the
Eighth Circuit.

No. 11,172.

In the Matter of

St. Louis Southwestern Railway Company, Debtor,
Guaranty Trust Company of New York, as Trustee under St.
Louis Southwestern Railway Company First Terminal
and Unifying Mortgage dated January 1, 1912, Ap-
pelleah,

vs.

Berryman Henwood, Trustee of St. Louis Southwestern Rail-
way Company, Debtor, St. Louis Sout .western Rail-
way Company, and Southern Pacific Company, Ap-
pellées.

In Proceedings for Reorganization of a Railroad.

The undersigned hereby acknowledge that they have been
advised that Guaranty Trust Company of New York, as
Trustee under St. Louis Southwestern Railway Company
First Terminal and Unifying Mortgage dated January 1,
1912, proposes to file in the United States Circuit Court of
Appeals for the Eighth Circuit, a petition for leave to appeal
under Section 24 (b) of the Bankruptcy Act from an order
of the United States District Court for the Eastern Division
of the Eastern Judicial District of Missouri, entered in a
proceeding then pending in said Court entitled "In the Mat-
ter of St. Louis Southwestern Railway Company, Debtor, In
Proceedings for Reorganization of a Railroad, No. 8497," on
March 21, 1938, allowing in part and disallowing in part the
proof of claim and supplement thereto of said Guaranty Trust
Company of New York, and that said Guaranty Trust of New
York proposes to file with said petition an assignment of
errors, and the undersigned do hereby waive notice of the
presentation and hearing of said petition for leave to appeal,
and consent that said petition be presented and heard before
said Court without the necessity of notice to the undersigned,
and without the necessity of serving upon the undersigned
copies of said petition for leave to appeal and said assign-
ment of errors to be filed therewith.

BERRYMAN HENWOOD,

Trustee of St. Louis Southwestern Rail-
way Company, Debtor,
By A. H. Kiskaddon, Carleton S. Hadley,
His Attorneys.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,
By A. H. Kiskaddon, Carleton S. Hadley,
Its Attorneys.

SOUTHERN PACIFIC COMPANY,
By Ben C. Dey, George L. Buland, Its
Attorneys.

(Endorsed): No. 11,172. Waiver of Notice as to Petition for Leave to Appeal under Section 24(b) of the Bankruptcy Act. Filed in U. S. Circuit Court of Appeals on April 2, 1938.

(Petition for Leave to Appeal under Section 24(b) of the Bankruptcy Act, filed in U. S. Circuit Court of Appeals.)

In the United States Circuit Court of Appeals for the Eighth Circuit

No. 11,172

In the Matter of

St. Louis Southwestern Railway Company, Debtor.

Guaranty Trust Company of New York, as Trustee under St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage dated January 1, 1912, Appellant,

vs.

Berryman Henwood, Trustee of St. Louis Southwestern Railway Company, Debtor, St. Louis Southwestern Railway Company, and Southern Pacific Company, Appellees.

In Proceedings for Reorganization of a Railroad.

To the Honorable Judges of the United States Circuit Court of Appeals for the Eighth Circuit:

Your petitioner, Guaranty Trust Company of New York, as Trustee under St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage dated January 1, 1912, conceiving itself aggrieved by the order of the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri, made by Honorable Charles B. Davis, one of the judges thereof, on March 21, 1938, in the proceeding then pending in said court entitled "In the Matter of St. Louis Southwestern Railway Company, Debtor, In Proceedings for Reorganization of a Railroad, No. 8497" allowing in part and disallowing in part the proof of claim and

the supplement thereto filed by your petitioner as such trustee, files this its petition addressed to the discretion of this Honorable Court for leave to appeal in matter of law from said order of the District Court.

Your petitioner refers to the Assignment of Errors filed by it simultaneously with this petition, setting forth the errors made by the Court below and giving the grounds for this appeal, and makes said Assignment of Errors a part hereof.

Your petitioner further states that St. Louis Southwestern Railway Company, the above-named debtor, on or about April 24, 1912, executed and delivered to your petitioner and Walker Hill, as trustees, a mortgage dated January 1, 1912, known as First Terminal and Unifying Mortgage of said debtor, securing the bonds issued, and to be issued, under the terms of said mortgage; that said trustees duly accepted said trust; that said Walker Hill died and Frank C. Rand, an individual citizen of the State of Missouri, was appointed and became successor trustee to the said Walker Hill; that under the terms of said mortgage the said Walker Hill and his successor Frank C. Rand had no duties to perform on behalf of the bondholders, but your petitioner was authorized to act alone on behalf of the bondholders, and was given powers usually and customarily given to corporate trustees under mortgages securing railroad bond issues; that certain bonds were issued pursuant to the provisions of said trust indenture, aggregating a total amount in terms of dollars of \$21,638,000, but for the reasons hereinafter stated the appellant in this appeal is acting on behalf of only 5,636 bonds of a principal amount in dollars of \$1,000 each.

Your petitioner further states that said debtor, St. Louis Southwestern Railway Company, on December 12, 1935, filed in said District Court a petition for reorganization under amendatory section 77 of the Bankruptcy Act, said proceeding being No. 8497, and said petition was thereafter approved as properly filed, and Berryman Henwood was duly appointed and qualified as trustee of the property of said debtor; that pursuant to orders in said debtor proceeding No. 8497, your petitioner filed its proof of claim as Trustee under said mortgage on behalf of all bonds issued under the terms of said mortgage, except such bonds the holders of which should file individual claims, and thereafter by leave of court a supplement to said proof of claim was duly filed; that protests and supplemental protests against your petitioner's proof of claim were filed by each of the appellees referred to in the caption to this petition; that pursuant to a stipulation entered into on November 8, 1937, between your petitioner and

the said appellees, it was agreed that the trial of the issues between your petitioner and the said appellees should exclude all issues relative to the claims of such bondholders who had filed separate proofs of claim in said proceeding, and by reason of such stipulation and filing of said separate proofs of claim, the trial upon your petitioner's proof of claim and this petition for appeal involve only 5,636 bonds issued under said mortgage, said bonds being coupon bonds hereinafter described.

Your petitioner further states that said debtor during the year 1912 issued and sold for a valuable consideration certain negotiable coupon bonds, including the aforesaid 5,636 bonds; that all of said bonds were duly authenticated as provided by said indenture and all of said 5,636 bonds are held by various persons other than the said debtor; that each of said coupon bonds is payable at the option of the holder either in the sum of \$1,000 in the City and State of New York or 2490 guilders in Amsterdam, Holland, or in other foreign currencies, and that each semiannual interest coupon is payable either in the sum of \$25 or 62.25 guilders or in other foreign currencies.

Your petitioner further states that said coupon bonds are on their face due and payable on January 1, 1952, subject to provisions in the mortgage that your petitioner might declare said bonds immediately due and payable upon the occurrence of certain events of default; that certain events of default occurred, including non-payment of the semiannual interest coupons due January 1, 1936; that on May 5, 1936, the said District Court entered an order enjoining your petitioner from declaring the principal of the bonds secured by said mortgage to be due and payable immediately; that your petitioner appealed from said order, which was subsequently reversed by a decree of this Court in causes Nos. 10,679 and 10,687 in Bankruptcy, and your petitioner was permitted by the decree of this Court to declare said bonds immediately due and payable either as of the date of said declaration or as of May 5, 1936, the date of said injunction order; that pursuant to the mandate from this Court, the said injunction was dissolved on February 24, 1937, and on February 25, 1937, your petitioner served notice upon the trustee of the debtor and upon the debtor declaring the principal of said bonds due and payable immediately on May 5, 1936.

Your petitioner further states that on September 24, 1936, it made demand for payment in guilders in Amsterdam, Holland, pursuant to the provisions of the law of Holland, and immediately thereafter filed its aforesaid proof of claim.

Your petitioner further states that in its proof of claim it confirmed its election to receive payment in terms of guilders, that prior to said demand and the filing of said proof of claim it published in various newspapers in the United States and in foreign countries a notice to the bondholders to the effect that it intended to elect to receive payment in guilders and to file a proof of claim on the guilder basis.

Your petitioner further states that it was stipulated between your petitioner and the said appellees that the exchange value of the guilder should be considered as \$6778 on the following three dates: December 12, 1935, the date of the filing of the debtor petition; May 5, 1936, the date as of which said bonds were declared immediately due and payable; and September 24, 1936, the date on which your petitioner made demand as aforesaid in Amsterdam, Holland, and on which it made and executed its proof of claim; and it was further stipulated that the exchange value on the guilder on November 8, 1937, was \$5560.

Your petitioner further states that the said protests and supplemental protests to your petitioner's proof of claim were directed solely against the guilder option and were based on the contentions that said guilder option was invalidated by the Joint Resolution of Congress approved June 5, 1935, 31 U. S. C. A. Sec. 463 (commonly referred to as the Gold Clause Resolution), or was invalidated by said Joint Resolution of Congress as to holders of said bonds who are citizens of the United States; that any such option was invalidated by failure to exercise the same prior to May 5, 1936; that your petitioner did not have the right to exercise an election on behalf of the holders of said bonds; that said option would constitute an illegal fictitious increase of indebtedness under the Constitution and Statutes of the State of Missouri; and that if said option is valid, the exchange value of the guilder should be determined as of the date on which judgment is entered.

Your petitioner further states that a hearing was had on the proof of claim of your petitioner and the aforesaid protests thereto; that on the 23rd day of February, 1938, the said District Court entered Findings of Fact and Conclusions of Law to the effect that the guilder option was invalidated by the aforesaid Joint Resolution of Congress, and that the claim should be allowed on the basis of the dollar principal amount of said bonds, and on the 21st day of March, 1938, the Court entered an order allowing said proof of claim as to said 5,636 bonds on the basis of allowance of \$1,000 principal amount, plus interest on said sum at the rate of

Five Per Cent Per Annum from July 1, 1935, to December 12, 1935, and disallowing your petitioner's proof of claim as to any additional amount; that a copy of said Findings of Fact and Conclusions of Law and a copy of said order are hereto attached and reference is hereby made thereto; that the said order of the District Court and its Findings of Fact and Conclusions of Law are erroneous in the particulars set forth in the Assignment of Errors filed herewith.

Your petitioner further states that most of the facts were stipulated between your petitioner and the said appellees; that no substantial question of fact is involved; that the decision of said District Court is in conflict with the case of Anglo-Continental Treuhand, A. G. vs. St. Louis Southwestern Railway Company, 81 Federal (2) 11, decided by the United States Circuit Court of Appeals for the Second Circuit, in which a petition for certiorari was denied by the Supreme Court of the United States, which involved coupons on coupon bonds issued under the same mortgage as the coupon bonds involved in the proof of claim of your appellant, and the said findings, conclusions, and order of the said District Court were based on a certain decision of the United States Supreme Court, referred to in the Findings of Fact and Conclusions of Law hereto annexed, which decision did not construe a right or option to receive payment in foreign currency.

Wherefore, Your Petitioner Prays, That it be allowed in the discretion of this Honorable Court to appeal in the matter of law herein; that the prayer of this petition be granted, and a citation be issued to Berryman Henwood, Trustee of St. Louis Southwestern Railway Company, Debtor, St. Louis Southwestern Railway Company and Southern Pacific Company commanding them to appear before the United States Circuit Court of Appeals for the Eighth Circuit, to do and receive what may appertain to justice to be done in the premises; and that a Transcript of the Record in said proceedings, duly authenticated, may be transmitted to the United States Circuit Court of Appeals for the Eighth Circuit.

Dated Apr. 2, 1938.

GUARANTY TRUST COMPANY OF
NEW YORK, as Trustee under St.
Louis Southwestern Railway Company
First Terminal and Unifying Mortgage
dated January 1, 1912, Petitioner.

By Davis, Polk, Wardwell, Gardiner &
Reed; Thompson, Mitchell, Thompson
& Young, Its Attorneys.

(Findings of Fact and Conclusions of Law of District Court on issues presented by Claim of Guaranty Trust Company of New York, as Trustee, etc.)

(Filed February 23, 1938.)

Memorandum of Clerk of U. S. Circuit Court of Appeals:

The Findings of Fact and Conclusions of Law of the District Court on issues presented by Claim of Guaranty Trust Company of New York, as Trustee, etc., was attached to the foregoing Petition for Appeal, but is omitted at this place in the printed record in order to avoid duplication for the reason that a copy of such Findings of Fact and Conclusions of Law, etc., heretofore appear in this printed record.

(Order of United States District Court allowing Claim of Guaranty Trust Company of New York as Trustee, etc., in Certain Amount, etc.)

(Filed March 21, 1938.)

Memorandum of Clerk of U. S. Circuit Court of Appeals:

The Order of the United States District Court allowing the Claim of Guaranty Trust Company of New York, as Trustee, etc., in Certain Amount, etc., was attached to the foregoing Petition for Appeal, but is omitted at this place in the printed record in order to avoid duplication for the reason that a copy of such Order heretofore appears in this printed record.

(Endorsed): No. 11,172. Petition for leave to Appeal under Section 24(b) of the Bankruptcy Act. Filed in U. S. Circuit Court of Appeals on April 2, 1938.

(Assignment of Errors on Appeal allowed by U. S. Circuit Court of Appeals.)

Comes now Guaranty Trust Company of New York as Trustee under St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage dated January 1, 1912, and files the following assignment of errors upon which it will rely in the prosecution of the appeal herewith petitioned for in the above entitled cause from the order of the District Court entered on the 21st day of March, 1938.

1. The Court erred in entering its order dated March 21, 1938, in allowing only \$1,000.00, plus interest, for each of

the Debtor's First Terminal and Unifying Mortgage Bonds (hereinafter termed the "Bonds") allowed under said claim.

2. The Court erred in entering its order dated March 21, 1938, in failing to allow the sum of \$1,687.72, principal amount, plus \$37.739, being interest on said principal amount, at the rate of 5% per annum from July 1, 1935, to December 12, 1935, being the total amount of \$1,725.46 on each of the Bonds allowed under said claim.

3. The Court erred in entering its order dated March 21, 1938, in restricting the allowance on the Bonds allowed under said claim to the stated dollar amount of said Bonds, plus interest, instead of allowing an amount equal to the guilder exchange value of 67.78 cents on 2490 guilders principal amount of each Bond, plus interest on said amount at the rate of 5% per annum from July 1, 1935, to December 12, 1935.

4. The Court erred in entering its order dated March 21, 1938, in restricting the allowance on the Bonds allowed under said claim to the stated dollar amount of said Bonds, plus interest, instead of allowing an amount equal to the proper guilder exchange value on 2490 guilders principal amount of each Bond, plus interest on said amount at the rate of 5% per annum from July 1, 1935, to December 12, 1935.

5. The Court erred in entering its order dated March 21, 1938, in allowing said claim only on the basis of the dollar face value of said Bonds and making no allowance on account of the option conferred by said Bonds to receive payment in guilders.

6. The Court erred in that part of its Finding of Fact number 8 reading as follows:

"The Railway Company's said First Terminal and Unifying Bonds were issued to evidence the Debtor's liability for the repayment of sums of United States money borrowed."

7. The Court erred in failing to find that the foreign currency clauses of the Debtor's Bonds constituted an optional medium of payment offered by the Debtor at the time of the original issue of said Bonds for the purpose and with the effect of inducing purchasers thereof to purchase the same.

8. The Court erred in failing to find that the foreign currency clauses in the Debtor's Bonds were part of the consideration moving from the Debtor for the price paid therefor by purchasers thereof.

9. The Court erred in failing to find that at the time of issuance of the Debtor's Bonds, the Debtor understood, contemplated and agreed that the duty and expense of obtaining foreign exchange, including guilder exchange, would be assumed and discharged by the Debtor upon any valid election by or on behalf of any holders of said Bonds to receive any foreign currency permitted by said option.

10. The Court erred in failing to find that upon and in connection with the execution and delivery of the Debtor's First Terminal and Unifying Mortgage and upon and in connection with the issuance and purchase of the Debtor's Bonds thereunder, the Debtor intended and agreed with or for the benefit of purchasers and holders of said Bonds that the foreign currency options stated in said Bonds, whether in guilders, marks, pounds or French francs, were and were to be equal and interchangeable alternatives of the same rank with the promise therein to pay dollars.

11. The Court erred in failing to find that upon and in connection with the execution and delivery of the Debtor's First Terminal and Unifying Mortgage and upon and in connection with the issuance and purchase of the Debtor's Bonds thereunder, the Debtor intended and agreed with or for the benefit of purchasers and holders of said Bonds that the Debtor would, upon any valid election of the money of payment, pay the designated amounts in the respective currencies, whether in dollars, guilders, marks, pounds or French francs, as alternative promises of co-ordinate and equal rank in all respects.

12. The Court erred in failing to find that the Debtor's promise in its Bonds to pay United States dollars was and was intended to be a promise performable only on the valid exercise of the option contained in said Bonds and said Mortgage.

13. The Court erred in failing to find that at the time of issuance of the Bonds the Debtor intended and agreed with or for the benefit of purchasers or holders of said Bonds that at the maturity or upon any acceleration thereof the option of the medium of payment as among dollars, guilders, marks, pounds or francs should be exercised by, or on behalf of, the holders of said Bonds.

14. The Court erred in that part of its Finding of Fact number 8 reading as follows:

*** the amount of guilders mentioned in the bonds was at the time of the issuance of said bonds the equivalent of \$1,000 United States gold coin of the standard of weight

and fineness as it existed on January 1, 1912, and it was understood, and specified in the indenture under which said bonds were issued, that the amounts of guilders, pounds, francs or marks mentioned in said bonds were each "the equivalent of United States gold coin in said amount and of such standard of weight and fineness."

15. The Court erred in failing to find as part of its Finding of Fact number 8 in lieu of the part thereof above quoted in the Assignment of Error numbered 14:

" * * * the amount of guilders mentioned in the bonds was at the time of the issuance of said bonds the equivalent of \$1,000 United States gold coin of the standard of weight and fineness as it existed on January 1, 1912, and it was understood and specified in the Indenture under which said bonds were issued, that the amounts of guilders, pounds, francs or marks mentioned in said bonds were each the equivalent of United States gold coin in said amount and of such standard of weight and fineness at the time of issuance in 1912, but not necessarily at any other time or at any time after the time of issuance in 1912."

16. The Court erred in failing to find that at the time of issuance of the Debtor's Bonds the Debtor understood and realized that after issuance thereof the foreign currencies mentioned in said Bonds might fluctuate on the exchange market by comparison with United States dollars.

17. The Court erred in failing to find that the Claimant's election to receive, and demand for, payment in guilders of the amount embraced within its proof of claim, was duly made on September 24, 1936.

18. The Court erred in its Conclusion of Law No. 1 in holding that the Joint Resolution of Congress of June 5, 1933 (hereinafter called the "Joint Resolution") reaches and applies to every obligation payable in money of the United States, incurred before or after June 5, 1933, whether or not there is contained therein or made with respect thereto any provision which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby.

19. The Court erred in its Conclusion of Law No. 1 in holding that every obligation payable in money of the United States must be discharged upon payment, dollar for dollar, in any coin or currency of the United States which at the time of payment is legal tender for public and private debts.

20. The Court erred in failing to hold that the Joint Resolution of Congress of June 5, 1933, does not reach and apply to obligations which may be paid in money of the United States but may also be paid in some foreign currency if such foreign currency is validly elected as the medium of payment.

21. The Court erred in its Conclusion of Law No. 2 in holding that the word "obligation" in the Joint Resolution refers to a bond or coupon of a character therein defined, as a whole, rather than to particular "provisions" contained therein.

22. The Court erred in its Conclusion of Law No. 2 in holding that the Supreme Court of the United States, in Norman v. Baltimore & Ohio R. R., 294 U. S. 240, 79 L. Ed. 885, and Perry v. United States, 294 U. S. 330, 79 L. Ed. 912, construed the word "obligation" as referring to a bond or coupon of the character defined in the Joint Resolution, as a whole, rather than particular "provisions" contained therein.

23. The Court erred in its Conclusion of Law No. 3 in holding that the word "payable" as used in the Joint Resolution, and as applied to the Debtor's Bonds means "capable of being paid".

24. The Court erred in failing to hold that the word "payable" as used in the Joint Resolution, and as applied to the Debtor's Bonds, refers to obligatory payment rather than permissive payment.

25. The Court erred in its Conclusion of Law No. 3 in holding that the Bonds of St. Louis Southwestern Railway Company issued under and pursuant to the Railway Company's First Terminal and Unifying Mortgage are required to be paid in United States dollars, reserving an option to the holders of the Bonds to elect to receive payment in guilders, francs, marks or pounds.

26. The Court erred in its Conclusion of Law No. 3 in holding that even if the aforesaid promises to pay guilders, francs, marks, or pounds, be considered as alternative to, and of equal rank with, the aforesaid promise to pay dollars, the Bonds are capable of being paid and the Debtor may be compelled to pay in money of the United States, and therefore they are "payable in money of the United States" within the meaning of the Joint Resolution.

27. The Court erred in failing to hold that the Bonds are not primarily dollar obligations, and that the promises con-

tained therein to pay guilders, francs, marks or pounds, are alternative to, and of an exactly equal rank with the promise contained therein to pay dollars.

28. The Court erred in its Conclusion of Law No. 4 in holding that the Joint Resolution deals with obligations payable in a specified amount of money of the United States which also contain provisions attempting to confer additional rights upon obligees and that the application of the Joint Resolution is not limited to obligations which can be paid only in money of the United States.

29. The Court erred in its Conclusion of Law No. 4 in holding that any contract which gives the obligee an unqualified right to receive money of the United States, even though such right requires the exercise of an option, is within the scope of the Joint Resolution.

30. The Court erred in failing to hold that any contract which gives the obligee the right to receive the money of the United States contingent on the exercise of an option which also affords the obligee the alternative right to receive money of a foreign nation, is not within the scope of the Joint Resolution.

31. The Court erred in failing to hold that the right to elect the currency which should be the medium of payment for the Bonds belonged to the Bondholders or to the Claimant acting on their behalf, and at no time passed to the Debtor.

32. The Court erred in its Conclusion of Law No. 5 in holding that the Bonds on which the said claim was filed were obligations payable in money of the United States on June 5, 1933, and therefore the Joint Resolution reaches and applies to said Bonds.

33. The Court erred in its Conclusion of Law No. 6 in holding that the option contained in the Bonds became inoperative on June 5, 1933, which was the effective date of the Joint Resolution, and that the purported election (whether or not the Claimant, as Trustee, had the power to make an election) on a date subsequent to June 5, 1933, was and is wholly ineffective and without any force or effect.

34. The Court erred in its Conclusion of Law No. 6 in holding that said Bonds were on June 5, 1933, payable in money of the United States and the said Joint Resolution on that date directed that all obligations then so payable should be discharged upon payment, dollar for dollar, in any coin

or currency which at the time of payment is legal tender for public and private debts.

35. The Court erred in failing to find that the election by Guaranty Trust Company as Trustee to receive payment in guilders was not contrary to the public policy of the United States as expressed in the Joint Resolution.

36. The Court erred in its Conclusion of Law No. 7 in holding that bonds of the character defined in the Joint Resolution must be discharged upon payment, dollar for dollar, in any coin or currency of the United States which at the time of payment is legal tender for public or private debts, and the Debtor being in bankruptcy under amendatory Section 77 of the Bankruptcy Act and therefore being incapable of discharging said Bonds by payment of any kind, a claim on said Bonds must be allowed, dollar for dollar, in any coin or currency of the United States which at the time of allowance is legal tender for public and private debts.

37. The Court erred in failing to hold that the Joint Resolution of Congress of June 5, 1933, declares to be against public policy only provisions in an obligation which purport to give the obligee a right to require payment in gold or a particular kind of coin or currency of the United States or an amount in money of the United States measured thereby.

38. The Court erred in failing to hold that a provision which purports to give the obligee a right to require payment in units of a specified foreign currency not money of the United States is valid and enforceable, even though contained in an obligation also containing provisions which purport to give the obligee an alternative right to require payment in money of the United States measured by gold.

39. The Court erred in holding in its Conclusion of Law No. 8 that the rule of public policy announced in the Joint Resolution is applicable to the Bonds herein.

40. The Court erred in its Conclusion of Law No. 9 in holding that under the authority of the Supreme Court of the United States in *Holyoke Water Power Company v. American Writing Paper Company*, 300 U. S. 324, 81 L. Ed. 383, the alternative forms of payment in the Bonds here involved require the payment of money and not the delivery of a commodity.

41. The Court erred in its Conclusion of Law No. 9 in holding that what was intended by the issuance of the Bonds was to assure the payment of a money debt in United States

dollars of a value as constant as that of gold or other currencies.

42. The Court erred in its Conclusion of Law No. 9 in holding that the words used in the Bonds show that the end in view was a repayment of United States money loaned and not a sale of guilders or any other currency or commodity.

43. The Court erred in its Conclusion of Law No. 9 in holding that the Bonds are within the letter of the Joint Resolution and equally within its spirit.

44. The Court erred in failing to hold that the guilder option contained in the Bonds, when validly exercised, became a straight contract to pay guilders.

45. The Court erred in failing to hold that the promise to pay guilders in Amsterdam, contained in the Bonds, is, in the eyes of the Court, a promise to deliver an ordinary commodity.

46. The Court erred in failing to hold that the Debtor's contract to pay guilders in Amsterdam, as set forth in its Bonds, was and is either a contract to deliver a commodity, or a contract to pay foreign money in a foreign country, and that such contract in either case is outside the scope of the Joint Resolution.

47. The Court erred in its Conclusion of Law No. 10 in holding that the number of guilders mentioned in each bond was specified as the equivalent of United States gold coin of the standard of weight and fineness existing on January 1, 1912; and that under the authority of the decision of the United States Supreme Court in *Holyoke Water Power Company v. American Writing Paper Company*, 300 U. S. 324, a contract for the payment of gold as the equivalent of money, and a fortiori, a contract for the payment of money measurable in gold, is within the letter of the Joint Resolution and equally within its spirit.

48. The Court erred in its Conclusion of Law No. 11 in holding that the decision of the United States Supreme Court in *Holyoke Water Company v. American Writing Paper Company*, 300 U. S. 324, 81 L. Ed. 383, places an interpretation upon the Joint Resolution inconsistent with the interpretation placed thereon by the United States Circuit Court of Appeals for the Second Circuit in *Anglo-Continental Treuhand, A. G. v. St. Louis Southwestern Railway Company*, 81 F. (2d) 11, cert. denied 80 L. Ed. 1381.

49. The Court erred in failing to follow the decision of the United States Circuit Court of Appeals for the Second

Circuit in Anglo-Continental Treuhand, A. G. v. St. Louis Southwestern Railway Company, 81 F. (2d) 11, cert. denied 80 L. Ed. 1381.

50. The Court erred in holding in its Conclusion of Law No. 12 that it was bound in this case to follow the decision of the United States Supreme Court in Holyoke Water Power Company v. American Writing Paper Company, 300 U. S. 324.

51. The Court erred in its Conclusion of Law No. 12 in holding that the decision of the United States Supreme Court in Holyoke Water Power Company v. American Writing Paper Company, 300 U. S. 324, 81 L. Ed. 383, supports the conclusions reached by the Court herein.

52. The Court erred in failing to hold that the Joint Resolution does not apply to contracts to pay guilders in Holland.

Wherefore, your petitioner prays that the said order may be reversed and the proof of claim of your petitioner be allowed in full, and for such other and further relief as to the Court may seem just and proper.

Dated Apr. 2, 1938.

GUARANTY TRUST COMPANY OF NEW YORK, as Trustee under St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage, dated January 1, 1912, Petitioner,

By Davis, Polk, Wardwell, Gardiner & Reed, Thompson, Mitchell, Thompson & Young, Its Attorneys.

(Endorsed): No. 11,172. Assignment of Errors. Filed in U. S. Circuit Court of Appeals on April 2, 1938.

(Order of U. S. Circuit Court of Appeals Allowing Appeal and Consolidating Appeals Allowed by the District Court and by the U. S. Circuit Court of Appeals, etc.)

In the United States Circuit Court of Appeals for the Eighth Circuit.

March Term, 1938.

Monday, April 4, 1938.

In the Matter of

St. Louis Southwestern Railway Company, Debtor.

In Proceedings for Reorganization of a Railroad.

Guaranty Trust Company of New York, as Trustee under St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage dated January 1, 1912, Appellant,

No. 11,172. vs.

Berryman Henwood, Trustee of St. Louis Southwestern Railway Company, Debtor, St. Louis Southwestern Railway Company, and Southern Pacific Company, Appellees.

The Petition of Guaranty Trust Company of New York, as Trustee under St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage dated January 1, 1912, for leave to appeal under Section 24 (b) of the Bankruptcy Act from the order of the United States District Court of the Eastern Division of the Eastern Judicial District of Missouri, made by the Honorable Charles B. Davis, one of the judges thereof, on the 21st day of March, 1938, in a proceeding then pending in said court, entitled, "in the Matter of St. Louis Southwestern Railway Company, Debtor, In Proceedings for Reorganization of a Railroad, No. 8497" allowing in part and disallowing in part the proof of claim and supplement thereto of said petitioner having been presented in open court, and good and sufficient reasons having been presented to the Court why said appeal should be allowed;

It Is Hereby Ordered, That said petition for leave to appeal from the said order is hereby granted and an appeal to this Court is hereby allowed.

It Is Further Ordered, That the bond on appeal be fixed in the sum of Five Hundred Dollars (\$500.00).

The Court having been advised that the said District Court, through the Honorable Charles B. Davis, has heretofore entered an order allowing an appeal to this Court from the aforesaid order of March 21, 1938, in said District Court;

It Is Further Ordered, That the two appeals be consolidated in this Court and that the Transcript of the Record filed in this Court in connection with said appeal allowed in aid District Court shall be considered as the Transcript of record for the purpose of this appeal, and that no additional transcript of the record shall be required.

By order of the Court April 4th, 1938.

(Bond on Appeal Allowed by U. S. Circuit Court of Appeals)

Know All Men By These Presents, That we, Guaranty Trust Company of New York, a corporation, as principal and United States Fidelity and Guaranty Company, a corporation, as surety, are held and firmly bound unto Berryman Henwood, Trustee of St. Louis Southwestern Railway Company, Debtor, St. Louis Southwestern Railway Company and Southern Pacific Company in the sum of Five Hundred Dollars (\$500.00) to be paid to the said Obligees to which payment well and truly to be made we bind ourselves and our successors, jointly and severally, by these presents.

The condition of this obligation is that:

Whereas, Guaranty Trust Company of New York, as Trustee under St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage dated January 1, 1912, has filed its petition for leave to appeal under Section 24(b) of the Bankruptcy Act to the United States Circuit Court of Appeals for the Eighth Circuit from the order entered by the ~~District Court~~ of the United States for the Eastern Division of the Eastern Judicial District of Missouri in the proceeding pending in said court entitled "In the Matter of St. Louis Southwestern Railway Company, Debtor, In Proceedings for Reorganization of a Railroad, No. 8497," on March 21, 1938, allowing in part and disallowing in part the proof of claim and the supplement thereto of said Guaranty Trust Company of New York, as such trustee; and

Whereas, said petition for leave to appeal has been allowed by said United States Circuit Court of Appeals;

Now, Therefore, if said Guaranty Trust Company of New York, the said appellant, shall prosecute its appeal to effect, and if it shall fail to make its appeal good, shall answer all costs, then this obligation shall be void, otherwise to remain in full force and effect.

Dated March 28, 1938.

GUARANTY TRUST COMPANY

OF NEW YORK,

By Kingsley Kunhardt,

Vice-President, Principal

Attest:

W. W. Merker,
Assistant Secretary.

(Seal)

UNITED STATES FIDELITY
AND GUARANTY COMPANY,
By S. Frank Hedges,

(Seal)

Attorney-in-Fact,
Surety.

Attest:

C. B. Bradbury,
Attorney-in-fact.

Conntersigned:

Joseph A. Sutz,
Resident Missouri Agent.Affidavit, Acknowledgement and Justification
By the United States Fidelity and Guaranty Company

State of New York,

County of New York—ss.:

Before me personally came S. Frank Hedges known to me to be Attorney-in-fact of the United States Fidelity and Guaranty Company, the corporation described in and which executed the annexed bond of Guaranty Trust Company of New York as surety thereon, who being by me duly sworn, deposes and says that he resides in the City of New York, State of New York, and that he is the Attorney-in-fact of the said United States Fidelity and Guaranty Company, and knows the corporate seal thereof; that said Company is duly and legally incorporated under the laws of the State of Maryland; that said Company has complied with the provisions of the Act of Congress of August 13, 1894, allowing certain corporations to be accepted as surety on bonds; that the seal affixed to the annexed bond of Guaranty Trust Company of New York is the corporate seal of the said United States Fidelity and Guaranty Company, and was thereto affixed by order and authority of the Board of Directors of said Company; and that he signed his name thereto by like authority as Attorney-in-fact of said Company and that he is acquainted with C. B. Bradbury and knows him to be Attorney-in-fact of said Company; and that the signature of said C. B. Bradbury subscribed to said bond is the genuine handwriting of said C. B. Bradbury and was thereto subscribed by order and authority of said Board of Directors, and in the presence of said deponent; and that the assets of said Com-

pany, unencumbered and liable to execution, exceed its claims, debts and liabilities, of every nature whatsoever, by more than the sum of two million dollars (\$2,000,000.00).

S. FRANK HEDGES.

(Seal)

Sworn to, acknowledged before me, and subscribed in my presence this 28th day of March, 1938.

FRANCES H. HALLY,

Notary Public, Kings County Clerk's No. 409,
Register's No. 9102

Certificate filed in the following counties: New York Clerk's No. 511, Register's No. 9H359, Bronx Clerk's No. 43, Register's No. 138H39, Queens Clerk's No. 1304, Register's No. 5376, Richmond County Clerk and Register Westchester County Clerk and Register. Term Expires March 30, 1939.

The within Appeal Bond is hereby approved both as to form and the sufficiency of the surety thereon, this 4th day of April, 1938.

KIMBROUGH STONE,

Presiding Judge of the United States Circuit Court of Appeals for the Eighth Circuit.

(Endorsed): No. 11,172. Appeal Bond. Filed in U. S. Circuit Court of Appeals on April 4, 1938.

(Citation on Appeal Allowed By U. S. Circuit Court of Appeals and Service.)

In the United States Circuit Court of Appeals.
For the Eighth Circuit

In Proceedings for Reorganization of a Railroad.

In the Matter of

St. Louis Southwestern Railway Company, Debtor.

Guaranty Trust Company of New York, as Trustee under St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage dated January 1, 1912, Appellant,

vs.

Berryman Henwood, Trustee of St. Louis Southwestern Railway Company, Debtor, St. Louis Southwestern Railway Company, and Southern Pacific Company, Appellees.

United States of America,

BERRYMAN HENWOOD, Trustee of St. Louis Southwestern Railway Company, Debtor, St. Louis Southwestern Railway Company, and Southern Pacific Company:

You and each of you are hereby cited and admonished to be appear in the United States Circuit Court of Appeals for Eighth Circuit at St. Louis, Missouri, forty days from and after the day this citation bears date, pursuant to a petition for leave to appeal under Section 24(b) of the Bankruptcy Act filed in the United States Circuit Court of Appeals for Eighth Circuit, and the order of said United States Circuit Court of Appeals allowing said appeal, wherein Guaranty Trust Company of New York, as Trustee under St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage dated January 1, 1912, is the appellant, and you are the appellees, to show cause, if any there be, why the order entered against said appellant, as in said petition for leave to appeal mentioned, should not be corrected and why justice should not be done the parties in that behalf.

Dated this 4th day of April, 1938.

KIMBROUGH STONE
Presiding Judge.

Service acknowledged.

A. H. KISKADDON
CARLETON S. HADLEY,
Attorneys for Berryman Henwood,
Trustee of St. Louis Southwestern Railway Company, Debtor.

A. H. KISKADDON
CARLETON S. HADLEY
Attorneys for St. Louis Southwestern Railway Company.

GEORGE L. BULAND
BEN C. DEY
Attorneys for Southern Pacific Company.

(Dorsed): No. 11,172. Citation on Appeal allowed by Circuit Court of Appeals. Filed in U. S. Circuit Court of Appeals on April 14, 1938.

Joint Motion of Appellant and Appellees for Leave to File
Printed Copies of Mortgage in Lieu of Including
and Reprinting a Transcript of Record.

Come now appellant and appellees and state that on April 2, 1938, the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri granted an appeal to the appellant from an order entered in said Court on March 21, 1938, in a cause entitled "In the Matter of St. Louis Southwestern Railway Company, Debtor, In Proceedings for Reorganization of a Railroad, No. 8497" and said appellant will also file, or has filed, a petition in the United States Circuit Court of Appeals for leave to appeal under Section 24(b) of the Bankruptcy Act and will request, in which request appellees join, that if said petition for leave to appeal be granted, that the two appeals be consolidated in this Court and that the Transcript of the Record filed in this Court in connection with said appeal allowed in said District Court shall be considered as a Transcript of the Record for the purpose of this appeal and that no additional Transcript of the Record shall be required; that one of the documents for the record on appeal is the First Terminal and Unifying Mortgage, dated January 1, 1912, from St. Louis Southwestern Railway Company to Guaranty Trust Company of New York and Walker Hill, Trustees; that said mortgage consists of more than 100 printed pages, and the trustee of the Debtor has delivered to appellant 20 printed copies of said mortgage, and both appellant and appellees desire to avoid unnecessary costs which would be occasioned by having said mortgage reprinted as part of the Transcript of Record; and that there are also on file in this Court several copies of said mortgage filed in connection with consolidated appeals Nos. 10,679 and 10,687 in bankruptcy in this Court;

Wherefore, appellant and appellees pray that this Court enter an order authorizing 20 printed copies of said mortgage to be filed in this Court, to be considered together with the remaining copies on file in said consolidated appeals Nos. 10,679 and 10,687 as part of the Transcript of Record in the aforesaid appeal taken from said District Court and in the appeal in this Court, if the said petition for leave to appeal should be granted, without the necessity of said mortgage being included in the Transcript of Record filed in this Court or in the printed Transcript of Record.

DAVIS, POLK, WARDWELL,
GARDINER & REED, THOMPSON,
MITCHELL, THOMPSON & YOUNG,
Attorneys for Plaintiff

**A. H. KISKADDON, CARLETON S.
HADLEY,**

Attorneys for Berryman Henwood,
Trustee of St. Louis Southwestern
Railway Company, Debtor.

**A. H. KISKADDON, CARLETON S.
HADLEY,**

Attorneys for St. Louis Southwest-
ern Railway Company.

BEN C. DEY, GEORGE L. BULAND.

Attorneys for Southern Pacific Com-
pany.

(Endorsed) No. 11,172. Joint Motion of Appellant and
appellees for leave to file printed copies of Mortgage in lieu
including and reprinting a transcript of record. Filed in
S. Circuit Court of Appeals on April 4, 1938.

(Order of U. S. Circuit Court of Appeals denying Motion
Parties for leave to file printed copies of certain Mort-
ge in lieu of printing same in record.)

United States Circuit Court of Appeals, Eighth Circuit.

March Term, 1938.

Monday, April 4, 1938.

the Matter of

St. Louis Southwestern Railway Company, Debtor.

Guaranty Trust Company of New York, as Trustee under
St. Louis Southwestern Railway Company First Ter-
minal and Unifying Mortgage dated January 1, 1912,
Appellant.

No. 11,172 vs.

Berryman Henwood, Trustee of St. Louis Southwestern
Railway Company, Debtor, St. Louis Southwestern
Railway Company, and Southern Pacific Company, Ap-
pellees.

Seal from the District Court of the United States for the
Eastern District of Missouri.

This matter comes before the Court on the joint motion
of appellant and appellees for leave to file printed copies
of Mortgage in lieu of including and reprinting thereof in
transcript of record, and it appearing to the Court that

in either these appeals or other appeals allowed this day to the Chemical Bank and Trust Company that the entire mortgage will have to be printed in the record, said motion is denied without objection from the parties represented before the Court.

April 4, 1938.

• • • (Notice by Appellant of Motion for Special Setting of cases.)

To: Berryman Henwood, Trustee of St. Louis Southwestern Railway Company, Debtor; St. Louis Southwestern Railway Company; and Southern Pacific Company, Appellees:

You are hereby notified that on Monday, April 4, 1938, at 10 a. m., the above-entitled appellant will present for hearing before the United States Circuit Court of Appeals at 1608 Federal Reserve Bank Building, Kansas City, Missouri, its motion that the appeal allowed in the United States District Court for the Eastern Division of the Eastern District of Missouri from the order entered in said Court on March 21, 1938, in the proceeding entitled In the Matter of St. Louis Southwestern Railway Company, Debtor, In Proceedings for Reorganization of a Railroad, No. 8497, and also the appeal allowed by the United States Circuit Court of Appeals for the Eighth Circuit on the petition of the appellant for leave to appeal if said petition shall be allowed, be set for hearing during the week commencing Monday, May 9, 1938, or as soon thereafter as said appeal or appeals can be heard, and for such special order with reference to the time for filing briefs as the Court may enter upon said motion.

Dated, March 31, 1938.

Yours, etc.,

THOMPSON MITCHELL THOMPSON & YOUNG,

Office and Post Office Address:
705 Olive Street,
St. Louis; Missouri.

**DAVIS POLK WARDWELL
GARDINER & REED,**

Office and Post Office Address:
15 Broad Street,
Borough of Manhattan,
New York, N. Y.

Attorneys for Guaranty Trust Company of New York, as Trustee under St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage dated January 1, 1912.

Copy received March 31, 1938.

BEN C. DEY and GEORGE L. BULAND,

Attorneys for Appellee, Southern Pacific Co.

(Endorsed): No. 11,172. Notice of Hearing of Motion of Appellant for Special Setting. Filed in U. S. Circuit Court of Appeals on April 4, 1938.

Statement by Appellee Southern Pacific Company in Opposition to Motion to Suspend Rules and for Special Setting of This Appeal.

The appellee, Southern Pacific Company, respectfully opposes the setting of this case for hearing at the Term of this court to be held at St. Paul, Minnesota, beginning on the first Monday of May, 1938, upon the following grounds:

1. Such setting is entirely out of the regular course and will require departure from Section 3 of the Rules of this Circuit providing that cases will be heard at the May Term in Paul if, and only if, transcripts therein are filed on or before the first day of March, and will also require the shortening of the time allowed by Rule 14 for the filing of briefs of appellees. The transcript herein could not be filed until the time in April, and as the appellant cannot file its brief at some time thereafter, the time allowed for appellee's briefs will be substantially less than the thirty-five days, after receipt of appellant's brief, contemplated by the rules.

To so shorten the time for preparation of the case by appellees does not permit adequate time for preparation of briefs. Such shortening of the time for briefs is particu-

larly inappropriate in this case. The case is one of extreme importance, involving several millions of dollars, and six principal points of protest have been raised. The point of protest upon which the case was decided in favor of the appellees in the Court below concerns the interpretation and application of the Joint Resolution of Congress of June 5, 1933, 31 U. S. C. A., Section 463, upon which there have been varying judicial and editorial views. It is quite true that the case was diligently prepared in the Court below, and that extensive briefs were filed therein. It is not true that the review and condensation for this Court of the material before the District Court and the further study desirable to fully enlighten this Court in respect to the issues are simple matters which can be done casually or in a limited time. The shortening of time for briefs places a hardship on counsel for appellees, not shared to the same extent by counsel for appellant. Appellant in this case is represented by Messrs. Davis Polk Wardwell Gardiner & Reed of New York City, by Messrs. Thompson, Mitchell, Thompson & Young of St. Louis, Missouri, and by Mr. Henry S. Caulfield of St. Louis, Missouri, and by the particular partners and associates of those firms handling the case. Signatures upon the brief filed in the District Court for appellant indicated that the brief filed was the joint work of seven lawyers, and in the preparation of the brief the firm of Davis Polk Wardwell-Gardiner & Reed can call upon a staff of from fifty to one hundred lawyers. On the other hand, the appellees Henwood and St. Louis Southwestern Railway Company are represented by Messrs. Kiskaddon and Hadley, who with a small staff are charged with the law work for that Railway Company and its Trustee, and the Southern Pacific Company is represented by the affiant George L. Buland and by Mr. Ben C. Dey, the General Counsel of that Railroad, whose time must necessarily be occupied largely with other matters. The railroads are now faced with many pressing problems, some of them of a legal nature, and it would be an extreme burden to require its regularly employed counsel to drop completely all other matters so as to attempt to prepare briefs within the shortened time proposed.

3. It is our judgment that the postponement of the hearing of the appeal in this case would not adversely affect the completion of the reorganization of the St. Louis Southwestern Railway Company. The investment of the Southern Pacific Company in the St. Louis Southwestern Railway Company is great. In addition to owning approximately 87% of the stock of all classes of that Railway Company, it owns a note which it took over from the Reconstruction Fi-

gance Corporation in the face amount of \$17,882,250, for which there is pledged \$23,903,000 of the St. Louis Southwestern Railway Company's General and Refunding Mortgage Five-Per Cent. Gold Bonds. Consequently, the concern of Southern Pacific Company in the speedy reorganization of the St. Louis Southwestern Railway Company is as great as that of any other party to this appeal. The plan proposed by the Examiner of the Interstate Commerce Commission for reorganization of that Company which is now before the Interstate Commerce Commission upon exceptions, provided a reservation of preferred stock to take care of an allowance on account of the guilder value of First Terminal and Unifying Bonds if the position of the appellant herein is sustained, and under the Examiner's plan, it is perfectly possible for the reorganization plan to be submitted to the security holders prior to the final determination of the issues in this case. It must be recognized that there will be many problems to be solved in connection with the reorganization plan of the railroad, and in our judgment the setting of this appeal out of its regular course will not result, to any degree, in expediting the reorganization of the Railway Company. It will be months before the Commission will hear arguments and formulate a Commission plan, and such plan must thereafter go to the District Court having jurisdiction, with provision for appeal to this Court. As to other claimants of guilders on account of First Terminal and Unifying Bonds in the bankruptcy proceeding, no disadvantage will accrue to them on account of this appeal not being expedited as their claims may be presented to the Referee for trial now or later in the year, as they may elect.

4. It is understood that the Trustee and his counsel desire to take a neutral position in regard to this motion to expedite the appeal because they do not wish, as Trustee's counsel, to oppose a motion by any party to expedite any of the proceedings. Because of the interest of the Southern Pacific Company in the stock of the St. Louis Southwestern Railway Company, it urges that counsel for the other appellants as well as its own counsel should be given sufficient time for the preparation of this important case.

Respectfully submitted,

BEN C. DEY,
GEORE L. BULAND,
Attorneys for Southern Pacific Company.

State of New York,
County of New York—ss.

I, George L. Buland, being first duly sworn, say that I am one of the attorneys for the appellee, Southern Pacific Company, herein, and the facts stated above are true, as I verily believe.

GEORGE L. BULAND.

Subscribed and sworn to before me this 31st day of March, 1938.

(Notarial Seal)

WARREN FAIRBROOK,
Notary Public, New York County
Clerk's No. 5, Register's No. 9-F
41.

Commission Expires March 30, 1939.

(Endorsed): No. 11,172. Statement by Appellee Southern Pacific Company in opposition to Motion to Suspend Rules and for Special Setting of this Appeal. Filed in U. S. Circuit Court of Appeals on April 4, 1938.

(Order of U. S. Circuit Court of Appeals Advancing Causes for Hearing and as to Time for Filing Transcript of Record, and Briefs, etc.)

United States Circuit Court of Appeals,

Eighth Circuit.

March Term, 1938.

Monday, April 4, 1938.

In the Matter of:

St. Louis Southwestern Railway Company, Debtor.
Guaranty Trust Company of New York, as Trustee under
St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage dated January 1, 1912,
Appellant,

No. 11,172. vs.

Berryman Henwood, Trustee of St. Louis Southwestern Railway Company, Debtor, St. Louis Southwestern Railway Company and Southern Pacific Company, Appellees.

Appeal from the District Court of the United States for the Eastern District of Missouri.

This matter coming before the Court on the motion of appellant to advance the cause for early hearing and the Court

having heard counsel and having considered the objections presented by counsel for the Southern Pacific Company, and being fully advised,

It is Ordered that this cause be advanced for hearing at a date hereafter to be fixed; that the record in the consolidated appeals be filed with the Clerk of this Court on or before the 15th day of April, 1938; that the brief of appellant be filed and served on or before April 25, 1938; that the brief or briefs of appellees be served and filed on or before May 25, 1938.

April 4, 1938.

(Waiver of Joinder as Party to Appeals by St. Louis Union Trust Company, as Trustee, etc.)

In the United States Circuit Court of Appeals for the Eighth Circuit.

Guaranty Trust Company of New York, as Trustee under St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage dated January 1, 1912, Appellant,

vs.

Berryman Henwood, Trustee of St. Louis Southwestern Railway Company, Debtor, St. Louis Southwestern Railway Company, and Southern Pacific Company, Appellees.

Guaranty Trust Company of New York, as Trustee under St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage dated January 1, 1912, having filed its proof of claim and supplement thereto in a proceeding in the District Court of the United States for the Eastern Division of the Eastern District of Missouri, entitled "In the Matter of St. Louis Southwestern Railway Company, Debtor, In Proceedings for Reorganization of a Railroad, No. 8497", and protests and supplemental protests thereto having been filed by Berryman Henwood, Trustee of said Debtor, by said Debtor, and by the Southern Pacific Company, pursuant to orders of said District Court permitting the filing of protests, and no other protests to said claim having been filed, and a hearing having been had on said protests and supplements thereto, and an order having been entered by said United States District Court on March 21, 1938, allowing in part and disallowing in part said proof of claim, and said Guaranty Trust Company of New York, as such Trustee, having taken appeals both in said United States District

Court and the United States Circuit Court of Appeals for the Eighth Circuit from said order against said protestants as appellees, the said orders allowing said appeals being entered respectively on April 2, 1938, and April 4, 1938, the undersigned does hereby consent to said appeals being heard without the undersigned being joined as a party thereto.

Dated April 8, 1938.

ST. LOUIS UNION TRUST
COMPANY,
as Trustee of the Central Arkansas and Eastern Railroad Company First Mortgage.

By Bryan, Williams, Cave & McPheeeters, Its Attorneys

(Endorsed): No. 11,172. Waiver of Joinder as party to appeals by St. Louis Union Trust Company, as Trustee, etc. Filed in U. S. Circuit Court of Appeals on April 14, 1938.

(Waiver of Joinder as party to appeals by the Protective Committee for Stephenville North and South Texas and Central Arkansas and Eastern Bondholders.)

Guaranty Trust Company of New York, as Trustee under St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage dated January 1, 1912, having filed its proof of claim and supplement thereto in a proceeding in the District Court of the United States for the Eastern Division of the Eastern District of Missouri, entitled "In the Matter of St. Louis Southwestern Railway Company, Debtor, In Proceedings for Reorganization of a Railroad, No. 8497", and protests and supplemental protests thereto having been filed by Berryman Henwood, Trustee of said Debtor, by said Debtor, and by the Southern Pacific Company, pursuant to orders of said District Court permitting the filing of protests, and no other protests to said claim having been filed, and a hearing having been had on said protests and supplements thereto, and an order having been entered by said United States District Court on March 21, 1938, allowing in part and disallowing in part said proof of claim, and said Guaranty Trust Company of New York, as such Trustee, having taken appeals both in said United States District Court and the United States Circuit Court of Appeals

for the Eighth Circuit from said order against said protestants as appellees, the said orders allowing said appeals being entered respectively on April 2, 1938, and April 4, 1938, the undersigned does hereby consent to said appeals being heard without the undersigned being joined as a party thereto:

Dated April 7, 1938.

THE PROTECTIVE COMMITTEE FOR
STEPHENVILLE NORTH AND
SOUTH TEXAS AND CENTRAL AR-
KANSAS AND EASTERN BOND-
HOLDERS,

By Edward Greensfelder,

Their Attorneys.

(Endorsed): No. 11,172. Filed in U. S. Circuit Court of Appeals on April 14, 1938.

(Waiver of Joinder as Party to Appeals by Chase National Bank of the City of New York as Trustee, etc.)

Guaranty Trust Company of New York, as Trustee under St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage dated January 1, 1912, having filed its proof of claim and supplement thereto in a proceeding in the District Court of the United States for the Eastern Division of the Eastern District of Missouri, entitled "In the Matter of St. Louis Southwestern Railway Company, Debtor, In Proceedings for Reorganization of a Railroad, No. 8497", and protests and supplemental protests thereto having been filed by Berryman Henwood, Trustee of said Debtor, by said Debtor, and by the Southern Pacific Company, pursuant to orders of said District Court permitting the filing of protests, and no other protests to said claim having been filed, and a hearing having been had on said protests and supplements thereto, and an order having been entered by said United States District Court on March 21, 1938, allowing in part and disallowing in part said proof of claim, and said Guaranty Trust Company of New York, as such Trustee, having taken appeals both in said United States District Court and the United States Circuit Court of Appeals for the Eighth Circuit from said order against said protestants as appellees, the said orders allowing said appeals being entered respectively on April 2, 1938, and April 4, 1938, the undersigned

does hereby consent to said appeals being heard without the undersigned being joined as a party thereto.

Dated April 7th, 1938.

THE CHASE NATIONAL BANK OF
THE CITY OF NEW YORK, as Trustee under St. Louis Southwestern Railway Company of Texas Dallas Branch First Mortgage dated April 1, 1903.

THE CHASE NATIONAL BANK OF
THE CITY OF NEW YORK, as Trustee under St. Louis Southwestern Railway Company of Texas Lufkin Extension First Mortgage dated August 1, 1903.

By Milbank, Tweed & Hope,
Its Attorneys

(Endorsed): No. 11,172. Filed in U. S. Circuit Court of Appeals on April 14, 1938.

(Waiver of Joinder as Party to Appeals by Bankers Trust Company, as Trustee, etc.)

Guaranty Trust Company of New York, as Trustee under St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage dated January 1, 1912, having filed its proof of claim and supplement thereto in a proceeding in the District Court of the United States for the Eastern Division of the Eastern District of Missouri, entitled "In the Matter of St. Louis Southwestern Railway Company, Debtor, In Proceedings for Reorganization of a Railroad, No. 8497", and protests and supplemental protests thereto having been filed by Berryman Henwood, Trustee of said Debtor, by said Debtor, and by the Southern Pacific Company, pursuant to orders of said District Court permitting the filing of protests, and no other protests to said claim having been filed, and a hearing having been had on said protests and supplements thereto, and an order having been entered by said United States District Court on March 21, 1938, allowing in part and disallowing in part said proof of claim, and said Guaranty Trust Company of New York, as such Trustee, having taken appeals both in said United States District Court and the United States Circuit Court of Appeals for the Eighth Circuit from said order against said protestants as appellees, the said orders allowing said appeals being entered respectively on April 2, 1938, and April 4, 1938, the undersigned does hereby consent to said appeals being heard without the undersigned being joined as a party thereto.

Dated April 7, 1938.

**BANKERS TRUST COMPANY, as
Trustee of Second Mortgage, etc.,
By Alexander & Green,**

Its Attorneys.

(Endorsed): No. 11,172. Filed in U. S. Circuit Court of Appeals on April 14, 1938.

(Waiver of Joinder as Party to Appeals by President and Board of Directors of The Manhattan Company, etc.)

Guaranty Trust Company of New York, as Trustee under St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage dated January 1, 1912, having filed its proof of claim and supplement thereto in a proceeding in the District Court of the United States for the Eastern Division of the Eastern District of Missouri, entitled "In the Matter of St. Louis Southwestern Railway Company, Debtor, In Proceedings for Reorganization of a Railroad, No. 8497", and protests and supplemental protests thereto having been filed by Berryman Henwood, Trustee of said Debtor, by said Debtor, and by the Southern Pacific Company, pursuant to orders of said District Court permitting the filing of protests, and no other protests to said claim having been filed, and a hearing having been had on said protests and supplements thereto, and an order having been entered by said United States District Court on March 21, 1938, allowing in part and disallowing in part said proof of claim, and said Guaranty Trust Company of New York, as such Trustee, having taken appeals both in said United States District Court and the United States Circuit Court of Appeals for the Eighth Circuit from said order against said protestants as appellees, the said orders allowing said appeals being entered respectively on April 2, 1938, and April 4, 1938, the undersigned does hereby consent to said appeals being heard without the undersigned being joined as a party thereto.

Dated April 7, 1938.

**PRESIDENT AND DIRECTORS OF
THE MANHATTAN COMPANY as
Trustee under Stephenville North &
South Texas Railway Company, First
Mortgage.**

By Root, Clark, Buckner & Ballantine,
Its Attorneys.

(Endorsed): No. 11,172. Filed in U. S. Circuit Court of Appeals on April 14, 1938.

(Waiver of Joinder as Party to Appeals by Chemical Bank & Trust Company, as Trustee, Etc.)

Guaranty Trust Company of New York, as Trustee under St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage dated January 1, 1912, having filed its proof of claim and supplement thereto in a proceeding in the District Court of the United States for the Eastern Division of the Eastern District of Missouri, entitled "In the Matter of St. Louis Southwestern Railway Company, Debtor. In Proceedings for Reorganization of a Railroad, No. 8497", and protests and supplemental protests thereto having been filed by Berryman Henwood, Trustee of said Debtor, by said Debtor, and by the Southern Pacific Company, pursuant to orders of said District Court permitting the filing of protests, and no other protests to said claim having been filed, and a hearing having been had on said protests and supplements thereto, and an order having been entered by said United States District Court on March 21, 1938, allowing in part and disallowing in part said proof of claim, and said Guaranty Trust Company of New York, as such Trustee, having taken appeals both in said United States District Court and the United States Circuit Court of Appeals for the Eighth Circuit from said order against said protestants as appellees, the said orders allowing said appeals being entered respectively on April 2, 1938, and April 4, 1938, the undersigned does hereby consent to said appeals being heard without the undersigned being joined as a party thereto.

Dated April 6th, 1938.

CHEMICAL BANK & TRUST
COMPANY, Trustee under St.
Louis Southwestern Railway
Company,
By Chadbourne, Hunt, Jaeckel
& Brown.

Its Attorneys.

(Endorsed): No. 11,172. Filed in U. S. Circuit Court of Appeals on April 14, 1938.

(Waiver of Joinder as Party to Appeals By Protective Committee for holders of St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage Bonds.)

Guaranty Trust Company of New York, as Trustee under St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage dated January 1, 1912, having filed

ts proof of claim and supplement thereto in a proceeding in the District Court of the United States for the Eastern Division of the Eastern District of Missouri, entitled "In the Matter of St. Louis Southwestern Railway Company, Debtor, In Proceedings for Reorganization of a Railroad, No. 8497", and protests and supplemental protests thereto having been filed by Berryman Henwood, Trustee of said Debtor, by said Debtor, and by the Southern Pacific Company, pursuant to orders of said District Court permitting the filing of protests, and no other protests to said claim having been filed, and a hearing having been had on said protests and supplements thereto, and an order having been entered by said United States District Court on March 21, 1938, allowing in part and disallowing in part said proof of claim, and said Guaranty Trust Company of New York, as such Trustee, having taken appeals both to said United States District Court and the United States Circuit Court of Appeals for the Eighth Circuit from said order against said protestants as appellees, the said orders allowing said appeals being entered respectively on April 2, 1938, and April 4, 1938, the undersigned does hereby consent to said appeals being heard without the undersigned being joined as a party thereto.

Dated April 8, 1938.

PROTECTIVE COMMITTEE FOR THE
HOLDERS OF ST. LOUIS SOUTH-
WESTERN RAILWAY COMPANY
FIRST TERMINAL AND UNIFYING
MORTGAGE BONDS.

By James Piper,

Its Attorney.

(Endorsed): No. 11,172. Filed in U. S. Circuit Court of Appeals on April 14, 1938.

Waiver of Joinder as Party to Appeals By Frank C. Rand,
Successor Co-Trustee, Etc.)

In the United States Circuit Court of Appeals For the
Eighth Circuit

Guaranty Trust Company of New York, as Trustee under St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage dated January 1, 1912, Appellant,

vs.

Berryman Henwood, Trustee of St. Louis Southwestern Railway Company, Debtor, St. Louis Southwestern Railway Company, and Southern Pacific Company, Appellees.

Guaranty Trust Company of New York, as Trustee under St. Louis Southwestern Railway Company First Terminal and

Unifying Mortgage dated January 1, 1912, having filed its proof of claim and supplement thereto in a proceeding in the District Court of the United States for the Eastern Division of the Eastern District of Missouri, entitled "In the Matter of St. Louis Southwestern Railway Company, Debtor, In Proceedings for Reorganization of a Railroad, No. 8497", and protests and supplemental protests thereto having been filed by Berryman Heuwood, Trustee of said Debtor, by said Debtor, and by the Southern Pacific Company, pursuant to orders of said District Court permitting the filing of protests, and no other protests to said claim having been filed, and a hearing having been had on said protests and supplements thereto, and an order having been entered by said United States District Court on March 21, 1938, allowing in part and disallowing in part said proof of claim, and said Guaranty Trust Company of New York, as such Trustee, having taken appeals both in said United States District Court and the United States Circuit Court of Appeals for the Eighth Circuit from said order against said protestants as appellees, the said orders allowing said appeals being entered respectively on April 2, 1938, and April 4, 1938, the undersigned does hereby consent to said appeals being heard without the undersigned being joined as a party thereto.

Dated April 13, 1938.

FRANK C. RAND,
Successor Co-Trustee under Mortgage
dated January 1, 1912, of St. Louis
Southwestern Railway Company se-
curing First Terminal and Unifying
Mortgage Bonds,

By Thompson, Mitchell, Thompson
& Young
Richard D. Shewmaker
His Attorneys.

(Endorsed): No. 11,172. Filed in U. S. Circuit Court of
Appeals on April 14, 1938.

239 And thereafter the following proceedings were had in said causes in the Circuit Court of Appeals, viz.:

(Appearance of Counsel for Appellant in Cause No. 11172.)

United States Circuit Court of Appeals
Eighth Circuit

Guaranty Trust Company of New York, as trustee, etc.,
Appellant.

No. 11,172. vs.

Berryman Henwood, Trustee of St. Louis Southwestern Rail-
way Company, Debtor, et al.

The Clerk will enter my appearance as Counsel for the Ap-
pellant.

DAVIS, POLK, WARDWELL,
GARDINER & REED,
EDWIN S. S. SUNDERLAND,
RALPH M. CARSON,
MALCOLM FOOSHEE,
THOMPSON, MITCHELL,
THOMPSON & YOUNG,
GUY A. THOMPSON,
JOHN M. HOLMES.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Apr.
2, 1938.

240 (Appearance of Mr. A. H. Kiskaddon and Mr. Carleton
S. Hadley as Counsel for Appellees in Cause
No. 11172.)

The Clerk will enter my appearance as Counsel for the Ap-
pellees.

A. H. KISKADDON,
CARLETON S. HADLEY.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Apr.
12, 1938.

(Appearance of Mr. Ben C. Dey as Counsel for Appellee
Southern Pacific Co. in Cause No. 11172.)

The Clerk will enter my appearance as Counsel for the Ap-
pellee, Southern Pacific Co.

BEN C. DEY,
165 Broadway, New York, N. Y.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Apr.
27, 1938.

(Appearance of Mr. George L. Buland as Counsel for Appellee Southern Pacific Co., in Cause No. 11172.)

The Clerk will enter my appearance as Counsel for the Appellee, Southern Pacific Co.

GEORGE L. BULAND,
165 Broadway, New York, N. Y.

(Endorsed) : Filed in U. S. Circuit Court of Appeals, Apr. 27, 1938.

241 (Appearance of Counsel for Amicus Curiae, Anglo-Continentale Treuhand, A. G., et al., in Cause No. 11172.)

The Clerk will enter my appearance as Counsel for the Anglo-Continentale Treuhand, A. G., et al.

HARRY HOFFMAN,
30 Pine Street,
New York.

WAYNE ELY,
Bank of Commerce Bldg.,
St. Louis.

LYON ANDERSON,
Bank of Commerce Bldg.,
St. Louis.

(Endorsed) : Filed in U. S. Circuit Court of Appeals, May 14, 1938.

(Appearance of Mr. W. D. Whitney and Mr. Robert D. Blasier as Counsel for Amicus Curiae, Cravath, deGersdorff, Swaine and Wood, et al., in Cause No. 11172.)

The Clerk will enter my appearance as Amicus Curiae.

W. D. WHITNEY,
CRAVATH, deGERSDORFF,
SWAINE and WOOD,
ROBERT D. BLASIER,
Post Office Address—
15 Broad St., New York, N. Y.

(Endorsed) : Filed in U. S. Circuit Court of Appeals, May 25, 1938.

242 (Appearance of Mr. Horace R. Lamb as Counsel for Amicus Curiae, Cravath, deGersdorff, Swaine & Wood, et al., in Cause No. 11172.)

The Clerk will enter my appearance as Amicus Curiae.

LEBOEUF, MACHOLD and LAMB,
By Horace R. Lamb,

Amicus Curiae Attorneys for Niagra,
Lockport & Ontario Power Company,
15 Broad Street, New York City, N. Y.

(Endorsed): Filed in U. S. Circuit Court of Appeals, May 25, 1938.

(Appearance of Mr. Ralph M. Carson, Mr. Malcolm Fooshee and Mr. Edwin S. S. Sunderland as Counsel for Appellant in Cause No. 11182.)

United States Circuit Court of Appeals
Eighth Circuit.

Guaranty Trust Company of New York, as Trustee, etc.,
Appellant,

No. 11182. vs.

Berryman Henwood, Trustee of St. Louis Southwestern Rail-
way Company, Debtor, et al.

The Clerk will enter my appearance as Counsel for the Appellant.

RALPH M. CARSON,
MALCOLM FOOSHEE;
EDWIN S. S. SUNDERLAND.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Apr. 26, 1938.

243 (Appearance of Mr. Guy A. Thompson and Mr. John M. Holmes as Counsel for Appellant in Cause No. 11182.)

The Clerk will enter my appearance as Counsel for the Appellant.

GUY A. THOMPSON.
JOHN M. HOLMES,
THOMPSON, MITCHELL, THOMP-
SON & YOUNG.

(Endorsed): Filed in U. S. Circuit Court of Appeals,
Apr. 26, 1938.

(Appearance of Mr. A. H. Kiskaddon and Mr. Carleton S. Hadley as Counsel for Appellees in Cause No. 11182.)

The Clerk will enter my appearance as Counsel for the Appellees.

A. H. KISKADDON,
CARLETON S. HADLEY.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Apr. 26, 1938.

(Appearance of Mr. Ben C. Dey as Counsel for Appellee, Southern Pacific Co., in Cause No. 11182.)

The Clerk will enter my appearance as Counsel for the Appellee Southern Pacific Co.

BEN C. DEY,
165 Broadway, New York, N. Y.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Apr. 27, 1938.

244 (Appearance of Mr. George L. Buland as Counsel for Appellee Southern Pacific Co., in Cause No. 11182.)

The Clerk will enter my appearance as Counsel for the Appellee Southern Pacific Co.

GEORGE L. BULAND,
165 Broadway, New York, N. Y.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Apr. 27, 1938.

(Appearance of Mr. W. D. Whitney and Mr. Robert D. Blasier as Counsel for Amicus Curiae, Cravath, deGersdorff, Swaine & Wood, et al., in Cause No. 11182.)

The Clerk will enter my appearance as Amicus Curiae.

W. D. WHITNEY,
CRAVATH, deGERSDORFF,
SWAINE & WOOD,
ROBERT D. BLASIER,
Post Office Address—
45 Broad St., New York, N. Y.

(Endorsed): Filed in U. S. Circuit Court of Appeals, May 25, 1938.

(Appearance of Mr. Horace R. Lamb as Counsel for Amicus Curiae, Crayath, deGersdorff, Swaine & Wood, et al., in Cause No. 11182.)

The Clerk will enter my appearance as Amicus Curiae.

LEBOEUF, MACHOLD and LAMB,
By Horace R. Lamb,

Amicus Curiae Attorneys for Niagra,
Lockport & Ontario Power Company,
15 Broad Street, New York City, N. Y.

245 (Endorsed): Filed in U. S. Circuit Court of Appeals,
May 25, 1938.

(Appearance of Counsel for Amicus Curiae, Anglo-Continental Treuhand, A. G., et al., in Cause No. 11182.)

The Clerk will enter my appearance as Counsel for the
Anglo-Continental Treuhand, A. G., et al., Amici Curiae.

HARRY HOFFMAN,
(of New York) 30 Pine St.,
New York.

WAYNE ELY,
LYON ANDERSON,
of St. Louis,
Bank of Commerce Bldg.,
St. Louis, Mo.

(Endorsed): Filed in U. S. Circuit Court of Appeals, May
28, 1938.

(Concurrence in and Approval of Appeals and Brief of Appellant by Bondholders Protective Committee, in Causes Nos. 11172 and 11182.)

In the Matter of

St. Louis Southwestern Railway Company, Debtor.

Guaranty Trust Company of New York, as Trustee under St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage dated January 1, 1912, Appellant,

Nos. 11,172, 11,182. vs. In Bankruptcy
Berryman Henwood, Trustee of St. Louis Southwestern Railway Company, Debtor, St. Louis Southwestern Railway Company, and Southern Pacific Company, Appellees.

246 Appeals from the United States District Court for the Eastern District of Missouri, Eastern Division.

Honorable Charles B. Davis, Trial Judge.

E. Stanley Glines, W. Rodman Peabody and J. Hambleton Ober, as the Protective Committee for holders of St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage Bonds, praying the indulgence of the Court thereto, state that they were and are interveners in the proceeding entitled "In the Matter of St. Louis Southwestern Railway Company, Debtor" aforesaid, and by counsel participated in the hearing and argument of the claim of the appellant, Guaranty Trust Company of New York, as Trustee under the mortgage securing said bonds; that they fully approved and do approve of these appeals taken by the said mortgage trustee from the order of the District Court entered on March 21, 1938, from which said appeals were taken, and did not join therein or become a party thereto solely because they considered the interests of all the holders of said bonds to be fully represented and protected by these appeals of the said Guaranty Trust Company of New York as such mortgage trustee; that through their counsel they have carefully read and fully approve of and concur in the brief for said Appellant Guaranty Trust Company of New York as Trustee aforesaid, filed or to be filed herein.

Dated April 26, 1938.

Respectfully submitted,

JAMES PIPER,
HENRY S. CAULFIELD,
Attorneys for Protective Committee
for Holders of St. Louis Southwestern
Railway Company First Terminal and
Unifying Mortgage Bonds.

247 We consent to the filing of the within instrument of concurrence, etc.

A. H. KISKADDON,
CARLETON S. HADLEY,
Attorneys for Berryman Henwood,
Trustee, and for Debtor.

BEN C. DEY,
GEORGE L. BULAND,
Attorneys for Southern Pacific Co.
Attorneys for Appellees.

THOMPSON, MITCHELL,
THOMPSON & YOUNG,
JOHN M. HOLMES,
Attorneys for Appellant.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Apr. 28, 1938.

(Order of Submission in Causes Nos. 11172 and 11182.)

May Term, 1938.

Saturday, May 28, 1938.

These causes having been called for hearing in their regular order, the Court upon application of counsel allowed three hours for oral argument, and thereupon argument was made by counsel as follows: Mr. Ralph M. Carson for appellant, Mr. Harry Hoffman for Anglo-Continentale Treuhand, A. G., et al., Amici Curiae, on the side of appellant, Mr. A. H. Kiskadden and Mr. Carleton S. Hadley for appellee Berryman Henwood, Trustee, etc., Mr. George L. Buland for appellee Southern Pacific Company, Mr. William D. Whitney for Cravath, deGersdorff, Swaine & Wood, et al., Amici Curiae, on the side of appellee, and Mr. Guy A. Thompson for appellant.

Thereupon, these causes were submitted to the Court on the transcript of the record from said District Court and the briefs of counsel filed herein, with leave to appellant to file reply brief instanter.

248 (Opinion in Causes Nos. 11172 and 11182.)

United States Circuit Court of Appeals
Eighth Circuit.

No. 11,172.—MAY TERM, A. D. 1938.

Guaranty Trust Company of New York, as Trustee under St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage dated January 1, 1912,
Appellant,

vs.

Berryman Henwood, Trustee of St. Louis Southwestern Railway Company, Debtor, St. Louis Southwestern Railway Company, and Southern Pacific Company.

Appeal from the District Court of the United States for the Eastern District of Missouri.

No. 11,182.—MAY TERM, A. D. 1938.

Guaranty Trust Company of New York, as Trustee under St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage dated January 1, 1912,
Appellant,

vs.

Berryman Henwood, Trustee of St. Louis Southwestern Railway Company, Debtor; St. Louis Southwestern Railway Company, and Southern Pacific Company,

Appellees.

Appeal from the District Court of the United States for the Eastern District of Missouri.

[July 13, 1938.]

Mr. Ralph M. Carson and Mr. Guy A. Thompson (Mr. Edwin S. S. Sunderland, Mr. John M. Holmes and Mr. Malcolm Fooshee were with them on the brief) for appellant.

Mr. A. H. Kiskaddon and Mr. Carleton S. Hadley for appellee, Berryman Henwood, Trustee.

Mr. George L. Buland (Mr. Ben C. Dey was with him on the brief) for appellee Southern Pacific Company.

Mr. Harry Hoffman (Mr. Wayne Ely and Mr. Lyon Anderson were with him on the brief) for Anglo-Continentale Treuhand, A. G., et al., amici curiae.

Mr. William D. Whitney (Messrs. Cravath, de Gersdorff, Swaine and Wood, Messrs. Le Boeuf, Machold and Lamb, Mr. Horace R. Lamb and Mr. Robert D. Blasier were with him on the brief) for amici curiae Cravath, de Gersdorff, Swaine and Wood, et al.

Before STONE, SANBORN and VAN VALKENBURGH, Circuit Judges.

STONE, Circuit Judge, delivered the opinion of the court.

As of January 1, 1912, the St. Louis Southwestern Railway Company (a Missouri corporation) executed a deed of trust (First Ter-

rnal and Unifying Mortgage) securing an issue of bonds. That company is now in administration under Section 77 of the Bankruptcy Act as amended (U. S. C. A. Title 11, Sec. 205). Appellant, as trustee in the deed of trust, filed a claim for the bondholders asserting a right to payment⁽¹⁾ in Dutch guilders instead of dollars and for allowance of the claim in an amount of dollars equal to such guilder value. Objections were filed to such payment and allowance—there being no objection to allowance on the basis of payment in dollars. From an order allowing the claim in dollar but denying it in guilder value, the trustee prosecutes an appeal allowed by this Court and also one allowed by the District Court.

The deed of trust provided both for coupon bonds and registered bonds. This claim of the trustee has to do only with coupon bonds. As to such, both the deed of trust and the bonds (including interest coupons) contained similar multiple currency provisions which were expressed as follows (taken from the bonds): the company promises to pay "at its office or agency in the Borough of Manhattan, City and State of New York, One Thousand Dollars in gold coin of the United States of America, of or equal to the standard of weight and fineness as it existed January 1, 1912, or in London, England, £205 15s 2d, or in Amsterdam, Holland, 2490 guilders, or in Berlin, Germany, marks 4200, D.R.W., or in Paris, France, 5180 francs". The definite amounts in the various foreign currencies set forth represent the exchange value of \$1,000.00 in gold in each of those currencies as of the date January 1, 1912. The outstanding controversy in this court, as in the trial court, is whether these provisions of the deed of trust and of the bonds (including interest coupons) giving an option of payment in currencies other than American gold dollars is rendered nugatory by the Joint Resolution of Congress, approved June 5, 1933 (48 Stat. 112, U. S. C. A. Title 31, Sec. 463).

This is a matter of the construction of the Joint Resolution. The particular language of the Resolution involved here is Section 1 reading as follows:

"That (a) every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency,

⁽¹⁾ The use of the word "payment" is not accurate in the sense of actual receipt of payment. All parties recognize that there will be no actual payment of these bonds in connection with this Debtor proceeding. The purpose in demanding payment in guilders is to increase the dollar allowance of the claim above the par dollar value of the bonds and interest coupons. Such would be the effect. The advantage would flow from the increased amount of this class of indebtedness in working out any plan of reorganization.

or in an amount in money of the United States measured thereby is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts. • • •

(b) — As used in this resolution, the term 'obligation' means an obligation (including every obligation of and to the United States excepting currency) payable in money of the United States; and the term 'coin or currency' means coin or currency of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations."

The line of cleavage arises here because of two things springing from the above quoted statement in the deed of trust and the bonds giving an option to the bondholder to elect payment in United States gold coins of a given weight and fineness or in any of the named foreign currencies. The first of these things is that this provision gives a clear right to payment in gold dollars. The second is that it does not require payment in such dollars only. That is, the obligation *may be* but need *not necessarily be* paid in gold dollars. For reasons to be stated, appellant contends that the Resolution covered only such obligations as *must* be paid in gold dollars or the equivalent measurement of other United States currencies. Appellees contend that the Resolution covers obligations which *may* be so paid.

Appellant bases its construction both upon existing judicial construction (2) of the Resolution and upon its own independent construction. First, as to judicial construction. Appellant relies mainly upon *Anglo-Continental Treuhand A. G. v. St. Louis Southwestern Railway Co.*, 81 Fed. (2d) 11 (C. C. A. 2) and *McAdoo v. Southern Pac. Co.*, 10 Fed. Supp. 953 (D. C. N. D. Cal.). Each of those cases decided that the Resolution did not cover multiple currency provisions, such as here—the former case involving bonds of the same issue as before us. The argument of

(2) Chief reliance is placed upon *Anglo-Continental Treuhand A. G. v. St. Louis Southwestern Railway Co.*, 81 Fed. (2d) 11 (C. C. A. 2, certiorari denied 298 U. S. 655) and *McAdoo v. Southern Pac. Co.*, 10 Fed. Supp. 953 (D. C. N. D. Cal.). Also, appellant cites *City Bank Farmers' Trust Co. v. Bethlehem Steel Co.*, 214 App. Div. (N. Y.) 634, 280 N. Y. Supp. 494; *Anglo-Continental Treuhand A. G. v. Southern Pacific Co.*, 269 N. Y. Supp. 859, aff'd 251 App. Div. 803, 298 N. Y. Supp. 181; *Anglo-Continental Treuhand A. G. v. Bethlehem Steel Co.*, N. Y. L. J. Oct. 15, 1937; *Nederlandse Middenstandsbank N. Y. v. Bethlehem Steel Co.*, N. Y. L. J., June 13, 1936, and *Zurich General Accident and Liability Ins. Co., Ltd. v. Lackawanna Steel Co.*, 299 N. Y. Supp. 862.

appellant that the denial of certiorari by the Supreme Court in the former case should be given weight in the construction of the statute cannot be allowed (*Atlantic Coast Line Railroad Co. v. Powe*, 283 U. S. 401, 403; *United States v. Carver*, 260 U. S. 482, 490). Both the Anglo-Continental and the McAdoo opinions reveal the same reasoning in reaching a decision. That reasoning is that the language of the Resolution is clear and unambiguous and means obligations which *must* be paid in United States gold dollars or the equivalent thereof in other United States money.

We are fully conscious of the fine ability of the Judges who wrote and concurred in the opinions urged by appellant; and we are sensitive to the desirability of harmony in the decisions of the various Circuits. However, we are not permitted thus to relieve ourselves of the duty of examining and determining for ourselves the issues coming before us. Where we have serious doubt or the determination is close, we are inclined to give solid weight to the consideration of harmony in decision. In this instance, we are unable to conclude that the Resolution is, as to the matter here, unambiguous. The crucial word "payable" is, standing alone, not confinable to one single definite meaning.⁽¹⁾ Nor is there such single meaning in a legal sense (48 C. J. 574). The meaning of the word can only be determined in the light of the situation and circumstances of its use. Our definition must be sought in the context of the Resolution and, if that does not clearly determine the matter, in such aids to construction as are permissible.

Turning first to the Resolution itself. We are unable to find in any part of the Resolution anything which expressly determines this construction—that is, there is no expression, on one hand stating that the obligation *must* be payable *only* in United States gold or United States money, or, on the other hand, that payment in multiple currencies, including United States gold, is included. There are particular expressions in the Resolution—such as "a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby" and "provision * * * which purports to give the obligee a right to require payment in gold or

⁽¹⁾ For example, Webster's New International Dictionary (1931 Ed.) defines "payable" as

1. That may, can, or should be paid; justly due.
2. Law. a. That may be discharged or settled by delivery of value. b. That is to be paid (by any particular person); as, bills payable; also, matured or maturing; due.
3. Likely or able to yield a profit; profitable; as, payable wash dirt; a payable commercial undertaking.

a particular kind of coin or currency, or in an amount in money of the United States measured thereby"—which are pertinent to our inquiry but each of them is, in itself, consistent with either of the opposed constructions here urged. In this situation, the Resolution is, therefore, not clear and hence is ambiguous.

When we take the Resolution as a whole we find, in its contents and wording, no further aid. We find ourselves in somewhat the situation presented in *Holyoke Water Power Co. v. American Writing Paper Co.*, 300 U. S. 324, which involved another form of alternative payment and where the Court was driven to determine construction and application of this Resolution by resort to considerations of "the evil to be remedied" (pp. 338, 339) and whether the particular contract provision involved there was within the evil. In such a status, we must conclude that the expressions in the Resolution, critical here, are ambiguous. So believing, the reasoning (of the cited cases), based upon the view that the Resolution is unambiguous, cannot be followed by us.

As to construction independent of the persuasive authority of the above decisions, appellant urges the following: (1) the first sentence of paragraph (a) of the section declares only "gold clauses" to be against public policy and nothing else is invalidated—no attempt to nullify foreign money alternatives can be found in the Resolution; (2) the words "obligation" and "payable", as used in the Resolution, mean "the absolute legal obligation or duty to pay in dollars"; (3) the sole purpose of the Resolution was to nullify "gold clauses" and there was no intention to affect obligations payable in foreign currencies; (4) the guilder alternative is of equal rank with the dollar alternative and is not equivalent to a promise to pay gold or money of the United States measured by gold.

We shall not treat each of the above four contentions separately but will include the substance of them in one discussion. Regarding ambiguity as existent in the Resolution and since the ambiguous portions are consistent with either of the here opposed contentions, we are pointed a proper method of solution in the *Holyoke Water Power Company case, supra*. That method is consideration of the evil intended to be prevented by the Resolution and the relation to that evil of the provisions for payment in multiple currencies here involved. The great purpose of the Resolution was expressed in the title: "To assure uniform value to the coins and currencies of the United States." The Chief Justice has expressed the purpose as an undertaking "to establish a uniform currency, and

parity between kinds of currency, and to make that currency, dollar for dollar, legal tender for the payment of debts (*Norman v. B. & O. R. Co.*, 294 U. S. 240, 316). Justice Brandeis has concisely stated the same as "the maintenance of our monetary system" (*Holyoke Water Power Co. v. American Writing Paper Co.*, 300 U. S. 325, 340). The Preamble of the Resolution further declared the purpose as being "to maintain at all times the equal power of every dollar, coined or issued by the United States, in the markets and in the payment of debts."

The Preamble further declared that such purpose was obstructed by existing contracts containing provisions "which purport to give the obligee a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby." To remove such obstruction, such provisions were nullified to the extent that they went beyond the requirement of payment "dollar for dollar, in any coin or currency [of the United States] which at the time of payment is legal tender for public and private debts." In short, the evil struck at by the Resolution was contract provisions purporting "to give the obligee a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby"—as defined in paragraph (b), "payable in money of the United States." The reason why this is an evil and the reason for preventing it being to prevent obstruction of the maintenance of the equal value of the various United States monies "in the markets and in the payment of debts."

With the evil and the reason for prevention in mind, we examine the provisions of the instruments before us to ascertain whether they fall within or without that evil and that reason as so expressed. The provision in the bonds (typical of those in the deed of trust and in the interest coupons) is that the obligor promises to pay "at its office or agency in the Borough of Manhattan, City and State of New York, One Thousand Dollars in gold coin of the United States of America, of or equal to the standard of weight and fineness as it existed January 1, 1912, or in London, England, £205 15s 2d, or in Amsterdam, Holland, 2490 guilders, or in Berlin, Germany, marks 4200, D.R.W., or in Paris, France, 5180 francs."

That portion of the provision reading payment "at its office or agency in the Borough of Manhattan, City and State of New York, One Thousand Dollars in gold coin of the United States of America,

of or equal to the standard of weight and fineness as it existed January 1, 1912" clearly is a provision "which purports to give the obligee a right to require payment in gold" and in "a particular kind of coin"—the weight and fineness being specified—of the United States.

The amount of guilders, pounds, francs or marks which might be elected by the obligee was, admittedly, determined by the value of the gold dollar as of January 1, 1912. The only effect of stating the precise amounts in those foreign currencies was to make definite and certain what might have been expressed as "guilders, pounds, francs or marks which would be the equivalent of their values on January 1, 1912, as measured by the value of one thousand gold dollars of the weight and fineness as of that date."

In this situation, what can normally take place and what is, in fact, here desired by appellant and will take place if the view of appellant be accepted is as follows: one class of creditors of a domestic corporation doing a purely domestic business will, in a United States court of bankruptcy and in a reorganization proceeding, secure a decided advantage not warranted by the dollar value of their obligations as controlled by the Resolution⁽⁴⁾; and such advantage will be secured purely by a calculation of the value in United States dollars of a foreign money—such value being brought about by the provisions of an obligation fixing the amount of such foreign money based on the value of the gold dollar of a specified weight and fineness.

The provision may or may not have had an entirely proper business purpose of making the bonds attractive to investors in Holland, England, France and Germany by providing for payment in the money of such countries within those countries. But it is the effect and not the purpose which is important. The effect is to freeze the unit of payment as of the gold dollar of the weight and fineness of January 1, 1912. The provision afforded a facile method by which every bond and interest coupon of the indebtedness—whether owned abroad or in this country—could be easily converted into payment in domestic gold dollars of a given weight.

(4) The allowance here covered 5636 bonds of one thousand dollars each. Inclusive of interest, the allowance on principal was \$5,636,000. The amount which would have been allowed had the guilder option been enforced as asked would have been \$9,512,001.19. The difference—\$3,876,001.19—arises from the difference in dollar value of the guilder in 1912 and at the dates of payment claimed by appellant to be here involved. In 1912, the dollar value of the guilder was \$4.420; at the dates here claimed to be involved, such value was \$6.680567. The lowest dollar value of the guilder in this record at any date subsequent to the filing of this debtor proceeding is \$5.560. The advantage thus obtainable, if appellant should prevail, would be a gain over face dollar value of these bonds of \$3,876,001.19 or slightly over \$2,158,588.00 dependent on whether the guilder is valued at \$6.680567 or at \$5.560.

and fineness or the foreign money (measured thereby) most advantageous to the holder at the time of payment. Since the face amount of the obligations is calculated in terms of the gold dollar at a specific date, the real effect is to give an option of payment in the most advantageous money (foreign or domestic) which, at the time of payment, nearest approaches the specified gold dollar value. By the simple expedient of immediately purchasing "dollars" after securing payment in guilders, pounds, marks or francs, the holder acquires, within the United States, a substantial premium over what could have been realized by receipt of payment in the United States. Hence, the holder is secured from depreciation of the gold dollar not only by a gold clause provision but by a four-fold further assurance in these foreign currencies of values based on the specified gold dollar. Thus by running around an international stump—passing through Holland en route—the holder of every bond and coupon enriches himself substantially at the expense of the debtor and of other creditors. Here, the same result (with further saving of exchange charges) is reached merely through a formal demand in Holland for payment (known to be futile) and by a simple mathematical calculation. Also, this in a situation where no payment is possible but where the above advantage will increase the indebtedness of the debtor and, therethrough, the participation of these holders in the property reorganization at the expense of every other person financially interested in that property.

Such a result would be squarely within a situation similar to that expressed by the Chief Justice in outlining the effect of devaluation of the dollar (*Norman v. B. & O. R. Co.*, 294 U. S. 240, 315). Clearly, such result so reached would interfere with the purpose of the Joint Resolution (expressed in its title) "To assure uniform value to the coins and currencies of the United States" which was to be accomplished through enforcement of "the declared policy of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States, in the markets and in the payment of debts" by striking down all private obligations requiring payment in a particular kind of coin or currency. In short, the evil sought to be avoided by the Resolution is accomplished by a form of indirection and, to that extent, the purposes of the Resolution and, therefore, the Resolution itself defeated. We think such a result brings these instruments within the intent of the Resolution and within the ambiguous expressions, set out hereinabove, of the Resolution. The vice of these instruments, in the view of the Resolution, is that they provide for payment in

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gold dollars of a specified weight and fineness or, optionally with the holders, in foreign currencies, the amount or value of which is based upon that gold dollar.

In what has been stated above, we have had in mind the situation before us. Whether a contract arising out of transactions between citizens and foreigners—such, for example, as purchase of foreign goods by citizens—wherein payment was provided at foreign cities in foreign currencies, even if such currencies were measured by defined gold dollars, is without our present consideration. Also, we have not considered contracts involving satisfaction in gold as a commodity. While foreign currencies are, if within this country, "commodities" in the sense that they have no standing as mediums of exchange, yet the contract provisions here provide for "payment" in money only and in foreign monies only within foreign countries. These contracts are money and not commodity contracts.

The order appealed from should be and is

Affirmed.

258 (Decree in Causes Nos. 11172 and 11182.)

United States Circuit Court of Appeals
Eighth Circuit.

May Term, 1938.

Friday, July 15, 1938.

Guaranty Trust Company of New York, as Trustee under St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage dated January 1, 1912, Appellant,

No. 11172. vs.

Berryman Henwood, Trustee of St. Louis Southwestern Railway Company, Debtor, St. Louis Southwestern Railway Company, and Southern Pacific Company.

Appeal from the District Court of the United States for the Eastern District of Missouri allowed by the United States Circuit Court of Appeals.

and

Guaranty Trust Company of New York, as Trustee under St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage dated January 1, 1912, Appellant,

No. 11182. vs.

Berryman Henwood, Trustee of St. Louis Southwestern Railway Company, Debtor, St. Louis Southwestern Railway Company, and Southern Pacific Company.

Appeal from the District Court of the United States for the Eastern District of Missouri allowed by the District Court,

These causes came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Missouri, and were argued by counsel.

On Consideration Whereof, it is now here ordered, adjudged, and decreed by this Court, that the order of the said District Court appealed from, in these causes be, and the same is hereby, affirmed with costs; and that Berryman Henwood, Trustee of St. Louis Southwestern Railway Company, Debtor, St. Louis Southwestern Railway Company, and Southern Pacific Company have and recover against the Guaranty Trust Company of New York, as Trustee under St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage dated January 1, 1912, the sum of Twenty Dollars for their costs herein and have execution therefor.

July 15, 1938.

Motion of Appellants for Stay of Issuance of Mandate in Causes Nos. 11172 and 11182.)

Now comes Guaranty Trust Company of New York, as trustee under St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage Dated January 1, 1912, appellant in the above entitled consolidated causes, and moves the Court to stay its mandate in the above entitled causes for sixty days in order to give appellant time within which to file a petition for a writ of certiorari in the Supreme Court of the United States.

Appellant states that Ralph M. Carson, of the firm of Davis, Folk, Wardwell, Gardiner & Reed, of the City of New York, conducted the trial in the District Court from which the above entitled consolidated appeals were taken, and with minor exceptions wrote the briefs filed by the appellant in this Court, and has at all times had the primary responsibility for the conduct of this litigation on behalf of the appellant, and excepts to prepare the petition for a writ certiorari to be filed in the Supreme Court of the United States; that said Ralph M. Carson is now in Europe, having left for Europe several days before the decision of this Court in the above entitled consolidated appeals, and is not expected to return until the middle or latter part of the month of August; that if this Court should grant only the period of

thirty days provided for in Rule 19 of the rules of this Court, there would not be sufficient time for the said Ralph M. Carson to prepare and file said petition within the said thirty day period; that the principal assistant of the said Ralph M. Carson in the said firm of Davis, Polk, Wardwell, Gardiner & Reed in connection with the preparation of the briefs filed by the appellant in the above entitled consolidated causes is likewise away from his office, and is not expected to return until about the middle or latter part of August, and that, therefore, it would not be practical to have preliminary work toward the preparation of said petition for a writ of certiorari performed before the return of said Ralph M. Carson.

Wherefore, appellant prays that, in lieu of the period of thirty days for stay of mandate provided in Rule 19 of the rules of this Court, this Court enter an order staying its mandate in the above entitled causes for a period of sixty days, in order to give appellant adequate time within which to file a petition for a writ of certiorari in the Supreme Court of the United States.

THOMPSON, MITCHELL,
THOMPSON & YOUNG,
GUY A. THOMPSON,
JOHN M. HOLMES,
Attorneys for Appellant.

261 (Endorsed): Filed in U. S. Circuit Court of Appeals,
Jul. 28, 1938.

(Order Staying Issuance of Mandate.)

May Term, 1938.

Monday, August 1; 1938.

On Consideration of the motion of Appellant for a stay of the mandate in these causes pending a petition to the Supreme Court of the United States for a writ of certiorari. It is now here ordered by this Court that the issuance of the mandate herein be, and the same is hereby, stayed for a period of sixty days from and after this date, and if within said period of sixty days there is filed with the Clerk of this Court a certificate of the Clerk of the Supreme Court of the United States that a petition for writ of certiorari, record and brief have been filed, the stay hereby granted shall continue until the final disposition of the case by the Supreme Court.

August 1, 1938.

262 (Clerk's Certificate.)

United States Circuit Court of Appeals
Eighth Circuit.

I, E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the Eastern District of Missouri as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, and full, true and complete copies of the pleadings, record entries and proceedings, including the opinion, had and filed in the United States Circuit Court of Appeals, except the full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States in certain causes in said Circuit Court of Appeals wherein the Guaranty Trust Company of New York, as Trustee, etc., was Appellant and Berryman Henwood, Trustee, etc., et al., were Appellees, No. 11172, and wherein the Guaranty Trust Company of New York, as Trustee, etc., was Appellant and Berryman Henwood, Trustee, etc., et al., were Appellees, No. 11182, as full, true and complete as the originals of the same remain on file and of record in my office.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this ninth day of August, A. D. 1938.

E. E. KOCH.

(Seal)

Clerk of the United States Circuit
Court of Appeals for the Eighth
Circuit.

[fol. 263] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 7, 1938

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ: